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*Officium Vicecomitum.*

THE  
**Office and Authority**  
OF  
**SHERIFFS:**

Gathered out of the **STATUTES**, and  
Books of the Common **LAWS** of this Kingdom.

By *Michael Dalton*, late of **Lincolns Inn**, Esq;  
and one of the Masters of the **CHANCERY**.

To which is added an *Appendix or Supplement*, containing  
a Collection of the *Statutes* touching Sheriffs made since Mr. *Dalton's* writing, which are in force and use at this day; also several special Returns of Writs, and the Expositions, Judgments, and Resolutions of the Reverend and Learned Judges, in the several Courts at *Westminster*; upon divers Statutes, Cases and Questions in Law relating to **SHERIFFS**; and several other new Matters.

The whole, being a work of great use and profit, not only to the Students and Practitioners in the **LAW**, but to all other the **GENTRY** of this Land, (on whom the burthen of this Office lyeth) especially to all immediate *Higb-Sheriffs* and *Under-Sheriffs*.

*With a new and copious TABLE, wherein the defects and imperfections of the old Table are supplied and amended.*

The New matter is inserted likewise in the Table, under their proper Heads, and have this mark \* set before them.

*Purged from the Errors of all former Impressions.*

**L O N D O N.**

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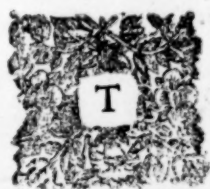




# TO THE READER.

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READER,



HE saying of the Wise Man, *That much reading is a weariness to the Flesh*, I have found by experience to be true. Nevertheless a Man should never be weary of well doing; and therefore this Labour of mine, howsoever weakly done, yet tending to the Weal-publick, and common good of my Country, I have once again thought meet to offer to the publick view, partly in duty to the King's most Excellent *Majesty*, and partly in zeal to the benefit of my Country. The scope of this Book is principally the preservation of his *Majesty's* Peace, the Execution of Justice, and the keeping of his *Majesty's* Rights: The first whereof, is the safety of his *Majesty*, and of all his Subjects; The second, is the life of his Laws: And the last, the Maintenance of his Honour, and Regal Estate; wherein I have endeavoured to do his *Majesty* the best service I can. The second thing aimed at in the composing of this Book, is the good of my Country; herein setting forth the Office, Authority, and Duty of Sheriffs, who are His *Majesty's* Deputies in their Counties, and have com-

### *The Epistle to the Reader.*

mitted unto them (*Custodiam Comitatus*) the charge of the whole County; the execution of whose charge in every of the three former particulars, tendeth not only to the good of the Prince, but also of all his People. I advise the Gentry of this Land, (upon whom the burthen of this Office lyeth) that they be careful how they transfer, and turn over this their Authority and charge, to their Undersheriffs and Officers, or to Men of mean Estates, who many times looking only after their own private profit, neglect the publick, regarding little or nothing either the preservation of the Kings rights, or the common good of the Country: For such Men not only too often use much deceit to the King in concealing his Rights and Duties, and much oppression to his Subjects, but bring hazard to the High Sheriffs themselves, by the breach of their Oaths to God, and by the indamaging of their Estates and credit in their Country: Besides the so daily and manifold oppressions and extortions in divers parts of this Realm, to the intolerable grievances of the Subjects. All these in some measure I have herein discovered, and plainly set down the Authority and Office of the Sheriff, that such as hereafter shall undergo the place, may more fully understand themselves, and their duty, and how to execute or see to the executing of their said Offices according to their Oaths; whereby they shall the better perform their Duties to GOD, their Prince, and their Country. The service of whom in this present undertaking, hath been the only design of,

Your Well-wisher,

MICHAEL DALTON.



The Office and Authority of S H E R I F F S,  
gathered out of the Law-Books and  
Statutes of this R E A L M.

C A P. I.

The Name, Antiquity, and Charge, &c.

Co. 9. 49.  
& 97.

**T**HE most eminent and supream dignity from the Conquest until the 11 year of Edward the Third, was the Earl of Countie, being anciently of the Blood-Royal, and taking their names Comites à Comitatu, Comes, or (as some have it.) Comites nomen acceperunt a comitando, quia principem comitarentur ad bella publicaque negotia, ejus lateri semper hærentes: Or as another saith, Kings vouchsafed to call them Comites, Companions; for that both out of their love they will, and out of knowledge can, and out of courage (the true ground of ancient Nobility) dare to advise boldly and truly upon every occasion: And these were of ancient time Præfecti seu Præpositi comitatus, the Rulers or Governours of the Countiees or Shires under the King, for so imports the Saxon words, sc. Shire Hevo, id est *Reve del Shire*, which is as much as Præpositus comitatus. And these Earls had anciently committed to them from the King the charge and custody of the Countie during his Majesties pleasure, but afterwards when Estates for Life and Inheritance were granted of the Office, then the Vicecomites were made, who have the same Authority that the ancient Comites had, and at this day there are some Relicks of that Dignity, for he hath album baculum, and the Grant of the Office is *Comissimus Vobis*: and also he takes place of every Noble man during the time that he is in Office, and is a grand Conservator of the peace, Smith de Repub. Anglor. pag. 59.

Chune ver.  
Pyot. Rolls  
1 R. 237.

And another ancient Writer says, That Alfred first dividing this Kingdom into several Countiees, (or Shires) instituted a Prefect or Lieutenant in every of those Countiees, which then were called Custodes, Keepers, and afterwards Comites, Earls, who were to keep the Countie in Obedience to the King, and to suppress the Outrages of notorious Robbers, Speed 4.

Sir Edw. Coke, lib. 5. telleth us, that Countie is fetched from the French, and Shire from the Saxon, and in Latin it is called, Comitatus à Comitando, for accompanying together; for men of one Countie do accompany together at their Countie Courts, Courts, Lets, and other Courts. And that there be in England 40 Countiees, and in Wales twelve, (Ibid. 109. b.) Mr. Cambden pag. 159. numb'reth 39 Shires, and in Wales 13. So in all there are 52 Shires at this day.

So then County, Comitatus, signifieth as much as Shire; the one coming from the French, the other from the Saxons: Both containing a circuit, or portion of the Realm, into which the whole Land is divided, for the better Government thereof, and the more easy administration of Justice.

There is no part of the Kingdom that lieth not within some County.

Of these Counties there be four of special mark, and are termed County Palatines, as the County Palatine of Lancaster, of Chester of Durham, and of Ely. And the chief Governours of these County Palatines, by especial Charter from the King, did heretofore all things touching Justice, absolutely, and in their own Name: But by the Stat. 27 H. 8. c. 24. this power of theirs is much abridged.

There be also Counties Corporate; and these be certain Cities, or ancient Boroughs, upon which Kings formerly have bestowed such extraordinary Liberties; as the Cities of Lond. York and Chester, Canterbury, Kingston upon Hull, Lichfield and Haverford, &c. Minsh.

Every County is now Governed by a yearly Officer, whom we call a Sheriff.

But the three honourable names, titles and dignities of Dukes, Marquesses and Vicounts, they came in long after the conquest: the name or title of Duke being no name of dignity in England, until the time of King Edw. the Third, who first created his eldest Son Prince Edw. (called the Black Prince) Duke of Cornwall, and after also created his other Sons Dukes, Co. 9. 124. & Co. 1. 69.

And Marquesses, their title or name was not before the time of King Richard the Second; Robert Earl of Oxford being then made the first Marquess, as appeareth by Master Cambden in his Britannia, & Co. 9. 124.

And Dominus de Bello Monte, was the first Vicount, and Created by King Henry the Sixth, Co. 1. 69.

Viccomes.

The Sheriff, Vicecomes, est vicem gerens, or the Earl's Deputy, following and doing that service in the executing all matters of Justice, as the Earl should do. And ancient Kings ordained in every County these Sheriffs to keep the Peace, &c. when the Earls were absent from their charges; And for the administration of Justice to every man within each County, and to be attendant to the King, and his Justices for the executing of their Commands, Co. 7. 33. & 9. Preface.

Il est un grand Conservator del Peace. Rolls 1 R. 237.

It seemeth that Earls, by reason of their high imployments, and attendance upon the King, being not able to follow also the business of the County, were delivered of all that burthen, and only enjoyed the honour as now they do: and that labour was laid upon the Sheriff; so that now the Sheriff doth all the Kings business in the County: And the Sheriff though he be still called Vicecomes, yet all he doth, and all his Authority is immediately from and under the King, and not from or under the Earl. So then at this day the Sheriff hath all the Authority, for the Administration and the Execution of Justice, which the Countess or Earl had, the King by his Letters Patents now committing to the Sheriff Custodiam Comitatus, Co. 9. 49. See the Patent of his Office hic postea.

Rolls 1 Rep. 237.

Master

Master Camden pag. 160. thus describeth them; Every year some one of the Gentlemen Inhabitants, is made Ruler of the County wherein he dwelleth, whom we call in Latin Vicecomes, as one would say, the Deputy of the Comes or Earl, and in our Tongue, Sheriff, that is, the Ruler of the Shire.

And although the King by his Letters Patents granteth to the Sheriff Custodiam Comitatus, without any express words to make a Deputy, yet the Sheriff (qui gerit vicem Comitatus) who cometh now in place of the Count, may make his Deputy, his Subvicecomes, or Under-sheriff. But this Deputy hath not, or ought not to have interest or estate in the Office; but is only as a shadow of the Officer, and doth all things in the name of the Officer himself, and for whom his Grantor must answer, Co. 9. 48. B.

And so the Under-sheriff hath not, or ought not to have any Estate or Interest in the Office it self; neither may he do any thing in his own Name, but only in the Name of the High Sheriff, who is answerable for him.

Laicoeks  
Case, Latch  
187. Co. 9.  
49.

And agreeable hereunto is the Resolution in Laicoeks Case in Latch 187. where a Writ was directed to the Sheriff, and delivered to the Under-sheriff, who was brought into the presence of the party which was to be arrested; and yet notwithstanding at the return of the Writ he returned Non est inventus. Whereupon an action was brought against the Under-sheriff for this false Return, and adjudged that it did not lie; for the High-sheriff only, who is the Officer of the Court is chargeable, and not the Under-sheriff; and that for every default of the Under-sheriff the High-sheriff shall be amerced, but the High-sheriff shall not be imprisoned for the act of the Under-sheriff, nor indicted for any misdemeanour committed by him, but for other matters he shall answer for him.

In ancient time this Officer was called Seneschallus Vicecomitis; and in the Statute of Westminster 2. cap. 39. (made Anno 12 Ed. 1. & Anno Dom. 1285.) he is called Subvicecomes, and in the Statute made 11 Hen. 7. cap. 15. he is called the Shire-clerk, Co. 9. 49. O. the Clerk of the County, Dyer 355. See Mitton's Case, Co. part 4. & hic cap. 118.

Note, that by the Common Law, he which hath an Office of trust cannot make a Deputy without express words in his Patent (or Grant) so to do, as appeareth in divers of our Books, Pl. 37 Litt. 379. Dyer 278. Br. Deputy 7. 9. 11 E. 4. fol. 1. &c. Now the Office of the High-sheriff is an Office of great trust and confidence; and therefore he cannot make any Deputy in such things as concerns his Judicial power; nor may Let, or Assign over his Office in any manner. And as for matters concerning his Ministerial Office, he may make and appoint under him his Under-sheriff, and other his Bailiffs and Deputies, who may occupy their places in the Right of the High-sheriff, and as his Servants only, as it seemeth.

Also the High-sheriff, as he is an Officer or Minister only, may make a Deputy concerning his Office, scil. He may make his Precept to another to arrest the party; or he may serve a Capias, or other Process by his Bailiff or Servant, &c. But where the Sheriff is made a Judge of the cause (as well as an Officer) there he cannot make a Deputy, but there he must sit and execute the same in his own person, and not by his Under-sheriff, or other Deputy, otherwise the proceedings will be erroneous, 21 H. 6. 27. & 9 E. 4. 31. Br. Deputy 19. 20. & plus hic cap. 3. 4. 81. 93. 113 & 122.

And see hic, cap. 2. fol. Good advise to High-sheriffs, to keep their Office in their house.

*Their Anti-  
quity.*

Sheriffs were great Officers, and Ministers of Justice (as now they are) long time before the Conquest, Co. lib. 3. Pref. & 4 fol. 33. And by Doderidge Justice inter Graunge and Denny, Rolls 1. Rep. 364. that Sheriffs and Coroners are à Principio Legis.

Yet Walter Cambden sheweth out of Ingulphus, that Sheriffs were first ordained of King Ælfred (or Alfred, otherwise called Alured in our English Chronicles) who Reigned about Ann. Dom. 872. And that he first divided England into several Counties, and after caused the Counties (or Shires) to be parted into Centuries, which they now call Hundreds, and into Decimes, which they call Tithings, and that every English man living under Law as a Liege Subject, should be within one Hundred and Tithing or another; and if a man were accused of any transgression, he should bring in straightways some one out of the same Hundred and Tithing, that would be bound for his appearance to answer the Law; but he that could not find such a surety, should abide the severity of the Laws: and in case any man standing thus accused (either before, or after Suretiship) fled, then all that Hundred and Tithing incurred a Mult or fine to be imposed by the King. He also divided the Governours of the Provinces (which before were called Vice Domini, that is, Vice Lords) into two Offices, to wit, Judges, now Justices, and Vice-comites, that is, Sheriffs, which still retain the same name: hæc Cambden, out of Ingulphus, and Malmsbury. Cambden, 158. Co. 9. Preface.

A Town is a Precinct, anciently containing ten Families, whereupon in some Counties they are still called Tithings, Finch. 80.

Those Tithings contained each of them ten households, or ten persons, whereof every one was Pledge for another's good Abearing (or Behaviour) who had one Chief called the Tithingman: And each Hundred had under their Verge ten such Tithings; and when any was chosen the chief of the Hundred, at the usual place of their meeting (after some reverence) every one with their Lances touched a Spear, which the Chief held upright in his hand, and by that Sign vowed to be peaceably Ordered, whence such a Society was called a Wapentake (scil. a touching of Weapons.) Finch. 126. Vid. Co. Lit. 109.

Besides in these Wapentakes (or Hundreds) many affairs were handled, and what could not be there decided, was referred to a meeting of greater Jurisdiction, containing usually three Hundreds, called in some places a Lath; and what could not be there decided, was referred to the whole Shire: for dispatch of which greater affairs, King Alfred appointed both Judges, and Sheriffs (as aforesaid) in every County, Speed 4.

And yet Minsh. verbo Wapentake, saith, that Wapentake is all one with that which we call an Hundred: shewing the same out of Bracton, and Mr. Lambard, and the Laws of King Edward: And he further sheweth the reason of the Denomination, to be their touching of Lances or Weapons, as aforesaid: And that this word is at this day used, especially in the North Counties by the River Trent.

Facta etiam Ministrorum suorum diligenter investigavit, adeo ut quos ex avaritia, aut imperitia errare cognosceret, ab officio removebat. This King Alfred did also diligently search out the doings of his Officers, so that if he knew any of them to erre, either through covetousness, or unskilfulness, then he removed from their Office, Fox 129.

And also this word Sheriff or Shireve, is derived of two Saxon words, viz. of Scyre, that is, the Shire or County, and Reve, that is, Keeper or Guardian, and so Scyre Reve is the Keeper or Guardian of the Shire, Co. 4. 33. St. 9. 97. Co. L. 168.

But albeit the Saxons in their time gave this Officer the vulgar name used to this day, yet it is manifest that the Office was of ancient time, and before the Saxons set any foot in England, Co. 9. Preface. So also before the time of the Saxons coming into England, and long before the time of King Alfred, this Kingdom was divided into Shires or Counties, but King Alfred in his time made the most certain division of them; for where during the time of the Heptarchy, there were many incroachments one upon another, and many ancient Bounds obscured, all these he reformed by his exact partition, Co. 9. Preface. Co. L. 168.

And Sir Edward Coke sup<sup>r</sup> Littl. fol. 168. sheweth that Sheriffs, Shires and Counties were long before, sc. in the time of the Romans, and before; and that by the Romans this Officer was called Vice Consul; the Romans calling that Consulatam, which we call Comitatum.

Rolls 1.  
R. 237.

The Sheriff then, as his name purports him to be the keeper or Governour of the County, so to this day his Patent is, *Commisimus tibi custodiam Comitatus*; And thereby he hath not only the charge or keeping of the King's Rights of his Crown within his County, but also the keeping of the Peace; And hath power to levy *Posse Comitatus*, sc. so many men as he shall think meet to go with him to apprehend Traytors, Felons, Riotoys, and the like offenders against the Peace; Or for to execute the King's Writs or Process, or the Precepts or Warrants of the King's Justices, &c. And also he hath the custody of all the common Gaols in the County now committed unto him: Besides he hath the Administration of Justice committed to him within his County, sc. within his Court to enquire of, and deal with matters touching the King himself, and with matters concerning the Commonwealth; as also in their County Courts to hear and determine perticular suits, and matters betwix party and party: for all which see *hic postea*. cap. 106, 109. & 3. Co. Lit. 168. saith, that the Sheriff hath *triplicem Custodiam*, viz. *vitz Justitiæ, vitz Legis, & vitz Reipublicæ*, &c. *vitz Justitiæ*, to serve process, and to return indifferent Juries for the trial of mens lives, liberties, lands and goods: *vitz Legis*, to execute process and make execution, which is the life of the Law: & *vitz Reipublicæ*, to keep the Peace, &c.

12 H. 7.  
fol. 17.

Chune &  
Pyot, Rolls  
1. R. 237.

So then at the first all administration of Justice was in one hand, sc. in the Crown, but afterwards (by reason of the multitude of people) the administration of justice was divided into Counties, and the power was committed to one deputy within every County, sc. first to the Earl, and after (in his absence, and now still) to the Sheriff as is aforesaid, who was, and now also is appointed to be the King's deputy to keep the peace; and that all the people should be obedient to him, and ready at his command in defence of the Realm, when any of the King's Enemies should come; he was and is appointed to be Conservator of the peace, and to suppress and punish malefactors within his County, and to defend the Realm when Enemies should come, and to be attendant upon the King in time of War, and to cause all the people within his County to go with the King for to defend the land against the King's Enemies, &c.

Co. 4. 33.

So that the High-Sheriff (*Vicecomes*) is an Officer of great Antiquity, and of great trust and authority, having from the King the custody

custody, keeping, command and government (in some sort) of the whole County committed to his charge and care.

*What manner  
of persons.*

And because this Office is of so great trust and confidence, it is met that such persons as shall be chosen thereunto, be men of good sufficiency, and such as may attend it, lest otherwise the King be much indamaged, and his people disinherited, and oppressed; and to this purpose the Statutes made 9 Ed. 2. de Vicecomitibus 2 Ed. 3. c. 4. 4 Ed. 3. c. 9. & 5 Ed. 3. c. 4. have ordained, that no man shall be Sheriff in any County, except he have sufficient Lands within the same County (or Shire) where he shall be Sheriff, whereof to answer the King, and his people, in case that any man shall complain against them.

Neither shall any Steward or Bayliff to any great Lord, be made Sheriff (except he be put forth of service) but such persons only shall be appointed, as may wholly attend to serve the King, and his people. Statute 9 Ed. 2. Lincoln.

*Their Election.*

The High-Sheriffs are to be chosen or assigned yearly by the Lord Chancellor or Keeper of the Great Seal, the Lord Treasurer of England, the President of the King's Council, the Keeper of the King's Privy Seal, and the chief Baron of the Exchequer, taking to them the chief Justices of the one Bench and of the other, as appeareth by the Statutes of 14 Ed. 3. cap. 7. & 21 Hen. 8. cap. 20. and afterwards are appointed by the King; whereas in former times they were chosen in the full Counties, by the Commons of the Country, as it appeareth by the Statute made, 28 Ed. 1. c. 8. & 13. Stat. 9 E.

And this Election or Nomination of the Sheriff shall be done yearly on the Whitsunday after all All souls, at the Exchequer, by the Statutes 9 Ed. 2. & 14 Ed. 3. c. 7.

And the King's Letters Patents whereby the new Sheriffs are made, do commonly bear date the sixth day of November. 12 Ed. 4. c. 1.

And yet the King by his Prerogative may make and appoint the Sheriffs, without this usual Assembly and Election, or Nomination in the Exchequer, as it happened, Anno 5 Eliz. vide Dyer 225. and is the daily practice at this day upon the death of any Sheriff.

Also the Sheriffs in every of the Shires of Wales, shall be nominated yearly, by the Lord President, Council, and Justices of Wales, and shall be certified up by them, and after appointed and elected by the King, as other Sheriffs be, 34 H. 8. c. 26.

*Cannot be di-  
vided.*

The Office of a Sheriff cannot be apportioned or divided; and therefore when the King maketh or appointed one to be Sheriff durante bene placito, altho' the King may determine this his Office at his pleasure, yet he cannot determine it in part, as for own Town or one Hundred, or any other part: neither can he abridge the Sheriff of any thing incident or belonging to his Office, for the Office is entire, and so it must continue in that integrity for the whole County, without any fraction or diminution (except it be by Act of Parliament, or that the King shall make some Town, &c. a County of it self, and shall appoint there a Sheriff and all things belonging to a Sheriff within the same Town, &c.) Neither can the Office of a Sheriff be determined, Co. 4. 33.

determined, nor any part thereof, without and until a new Sheriff be made for the execution and administration of Justice (except it be by the death of the King, or of the Sheriff,) Co. 4. 33. Finch. 12. See here postea tit. County Court, & hic c. 2.

## C A P. II.

2 & 3 Ed.  
6. cap. 34.

**N**OW the first thing that every new elected Sheriff must do at the entrance into his Office, is, that forthwith before he receives his Patent, and before he doth exercise any part of the said Office, he must put in sufficient sureties by himself, or by his sufficient Deputy or Deputies, into the King's Exchequer (sc. in the Kings Remembrancers Office there) and there must enter into Recognizance in such sum, and upon such conditions (as it semeth) as the Lord Treasurer, and Barons of the Exchequer shall think meet, upon pain of every Sheriff making default therein, to forfeit to the King an hundred pounds to be levied of his Lands and Goods wheresoever, &c. by process to be made out by the said Barons. See the Statute of 2 & 3 Ed. 6. c. 34.

I.  
He must enter  
Recognizance.

And yet it semeth, that the Condition of such Recognizance is usually for the payment of the Sheriff's proffers, or for the making of his Account in the Exchequer, which is twice in the year; That is to say, at or before mens Paschæ, and mens Michaelis. See the form of his Recog. hic cap. 124.

The High-Sheriff (or some other for him) having entered into Recognizance with Sureties in the Exchequer, as aforesaid, his Attorney there will write him a note, thereby signifying that he is Sheriff of such a County, and that he hath entered Recognizance, as aforesaid, The which note must be delivered to one of the six Clerks in the Chancery for his Warrant, to make the Sheriff's Patents by (sc. the Patent of his Office, with his Writ of assistance :) And besides, a Writ of discharge, to be delivered to his Predecessor, to discharge him out of his Office; the which should be delivered with all speed, for his own benefit or his Under-Sheriff's; for until it be delivered to his Predecessor, the precedent Sheriff may do execution of all Process.

2.  
He must procure  
his Patents.

The High-Sheriff hath this Authority given him by two Patents, by the one the King commits to him the custody of the County; by the other the King commands all other his Subjects within that County to be aiding and assisting to the Sheriff, in all things belonging to his said Office.

The forms of the said Patents are as followeth.

The

*The first Patent of his Office.*

**C**AROLUS Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ, Rex, fidei defensor, &c. Omnibus ad quos præsentēs literæ pervenerint salutem. Sciatis quod Commissimus dilecto nobis *A. B.* Militi Comitatus nostri Cantabrig. cum pertinent' custodiend. quamdiu nobis placuerit, Ita quod firmas debitas nobis reddat annuatim, ac de debitis nostris & omnibus aliis ad officium vicecomit' nostri prædict' spectant' nobis respondeat ad Scaccar' nostrum, in cuius rei Testimonium has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die anno Regni nostri, &c.

*The Patent of Assistance.*

**C**AROLUS Dei Grat' Angliæ, Scotiæ, Franciæ, & Hiberniæ, Rex, fidei defensor, &c. Archiepiscopis, Episcopis, Ducibus, Comitibus, Baronibus, Militibus, liberis Hominibus, & omnibus alijs de com. Cantabr. salutem. Cum concesserimus dilecto nobis *A. B.* Militi officium vicecom. nostri præd. cum pertinent', habend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde confectis plenius continetur, vobis mandamus quod eidem *A. B.* tanquam vicecom. nostro cum. præd' in omnibus quæ ad officium illud pertinent intendentes sitis auxiliantes & respondentes. In cuius rei testimon. has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die anno Regni nostri, &c.

So that the Sheriff is made by Letters Patents of Record, and therefore if it shall come in question whether he be Sheriff, or not, that may be tried by the Record; or it may be tried by the examination of the Sheriff himself, 10 H.4.7. 32 H.6. 27. Co.9.31.

*The form of the Writ of discharge directed to the old Sheriff.*

**C**AROLUS, &c. dilecto sibi *R. S.* Armigero nuper vicecom. Cantabr. salutem. Cum concesserimus dilecto, &c. nobis *A. B.* militi Com. nostrum præd' custodiend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde concess. plenius continetur, tibi præcipimus quod eidem *A. B.* com. nostr. præd. cum pertinentiis, una cum rotulis, brevibus, memorand. & omnibus aliis ad officium vicecom. præd' spectant', quæ in custodia tua existunt, per Indenturas inde inter te, & præfatum *A. B.* debite conficiend. liberes. Teste meipso apud Westmonaster, quinto die, &c.

And yet it seemeth by the Register fol. 295. that there be (or have ben) two Writs or Commissions to this purpose: The first a Writ of discharge in these words.

Rex omnibus ad quos, &c. salutem. Sciatis quod commissimus dilecto nobis *A. B.* &c. (who is the new Sheriff) com. nostrum Cantabr. cum pertinen. custodiend. quamdiu nobis placuerit, &c. In cuius rei, &c.

And then another Writ is directed also to the old Sheriff, and the effect thereof is thus.

Et mandatum est *R. S.* Armigero nuper vic. com. præd' quod eidem *A. B.*

*A. B. milit' com. præd' cum pertinentiis, una cum rotulis, brevibus, memorand' & omnibus aliis officium illud tangent', quæ in custodia sua existunt, per Indenturas inde, modo debito conficiend' liberet custodiend' in forma præd. Teste, &c.*

Also every Sheriff before he shall take upon him to use or exercise his said Office, must take and pronounce the Oaths of Supremacy and Allegiance, and the Oath for the due execution of his Office. <sup>3.</sup> *He must take his Oaths.*

The Oath of Supremacy the Sheriff is to take by force of the Statutes made 1 Eliz. c. 1. & 5 Eliz. c. 1. and also by the Statute made in 25 Car. Secundi Ca. 11. Entituled, An Act for preventing dangers which may happen from Popish Recusants.

*The form of which Oath followeth.*

Regist.  
301.

**I** *A. B.* do utterly testifie and declare in my Conscience that the King's <sup>To the Supremacy.</sup> Highness is the only supream Governour of this Realm, and of all other his Highness Dominions and Countries, as well in all Spiritual things or causes as Temporal, and that no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Preheminence or Authority, Ecclesiastical or Spiritual, within this Realm, and therefore I do utterly renounce and forsake all foreign Jurisdctions, Powers, Superiorities and Authorities, and do promise, that from henceforth I shall bear Faith and true Allegiance to the King's Highness, his Heirs and lawful Successors, and to my power shall assist and defend all Jurisdctions, Priviledges, Prehemences and Authorities granted or belonging to the King's Highness, his Heirs and Successors, or united or annexed to the Imperial Crown of this Realm: So help me God, and by the Contents of this Book.

The Oath concerning the Office of the Sheriff, sameth to be by the ancient Common Law of this Land, See Dyer fol. 168.

*The form whereof is as followeth.*

**Y** E shall swear, that well and truly ye shall serve the King's Majesty in <sup>Concerning the</sup> the Office of the Sheriff of the County of Cambridge, and do the <sup>Office.</sup> King's profit in all things that belongeth to you to do by way of your Office, as far forth as you can or may, you shall truly keep the King's Rights, and all that belongeth to the Crown, ye shall not assent to decrease, to lessning, ne concealment of the King's Rights, or of his Franchises, and whensoever you shall have knowledge that the King's Right, or the Rights of his Crown been concealed or withdrawn, (be it in Lands, Rents, Franchises or Suits, or any other things) ye shall do your true power to make them to be restored to the King again, and if you may not do it ye shall certify the King, or some of the Council thereof, such as you hold for certain will say it to the King; ye shall not respite the King's debts for any gift or favour, where you may raise them without great grievance of the debtors; ye shall truly and rightly treat the people of your Sheriffwick, and do right as well to poor as to rich, in all that belongeth to your Office; ye shall do no wrong to any man for any gift or other behest, or promise of goods, for favour, nor hate; ye shall disturb no mans Right; ye shall truly acquit at the *Exchequer* all those of whom ye shall any thing receive of the King's debts; ye shall nothing take whereby the King may lose, or whereby the right may be letted or disturbed, or the

C

King

King delayed, ye shall truly return and truly serve all the King's Writs as far forth as shall be to your cunning; ye shall not have to be your \* \* Nota. Under-sheriff of any of the Sheriffs Clerks of the last year passed; ye shall take no Bayliff into your service, but such as you will answer for; ye shall make each of your Bayliffs to make such Oath as you make your self in that belongeth to their occupation; ye shall receive no Writ by you or any of yours unlealed, or any sealed under the seal of any Justice, save of Justices in Oyer, or Justices assigned in the same Shire where ye be Sheriff in, or other Justices having power and authority to make any Writs unto you by the Law of the Land, or of the Justices of *Newgate*; ye shall make your Bayliffs of true \* and sufficient men in the County.

\* *Le residue del serement, que hic sequitur fuit inserte de puisne temps, come appiert per le Register, fol. 301.*

\* Also ye shall do all your power and diligence to destroy and make \* Note to cease all manner of Heresies and Errors, commonly called Lollaries, these words *All Heresies and Errors, commonly called Lollaries*, were objected against by the Lord Chief Justice Cook, and Ordered to be left out of the Oath, *Ch. Car. 18. H. 4. c. 5.* ye shall not let \* your Sheriffwick, nor any Bailiwick thereof, to any man; ye shall truly set and return reasonable and due issues of them that be within your Bailiwick, after their estate and behaviour, and make your pannels \* your self of such persons as be most next, most sufficient, and not suspect, nor procured, as it is ordained by the Statutes; and over this in eschewing and restraint of the Manslaughters, Robberies, and other manifold grievous offences that be done daily, (namely by such as name themselves Soldiers, and by other Vagrants, the which increase in number and multiply, so that the King's Subjects may not sure ride nor go to do such things as they have to do, to their intollerable hurt and hinderance;) ye shall truly and effectually with all diligence possible to your power execute the Statutes, as the Statutes of *Winchester* and *Vagabonds*: All these things ye shall truly observe and keep, as God help you, and by the Contents of this Book.

By a Statute made in 25 Car. 2. c. 2. he must receive the Sacrament, take the Oaths of Supremacy and Allegiance, and subscribe this following Declaration:

**I** A.B. do declare that I believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any person whatsoever.

The parts of this Oath, as Sheriffs, are shortly these.

*The King's Rights.*

1. **T**ruly to keep the King's Rights of his Crown, (i.e. his Lands Rents, Franchises, Suits, and all other things within that County, belonging to the Crown) without lessening or concealment of them; or else to certify the King, or some of his Council thereof.

*The King's Debts.*

2. That he shall not respite the King's Debts, where they may be raised without great grievance of the Debtors.

*Rights to all.*

3. To do Right to all, as well poor as rich, in all things belonging to his Office.

*The King's Debtors.*

4. Truly to acquit at the Exchequer (upon his Account) all such of the King's Debtors of whom he hath received any of the King's Debts.

*Writs.*

5. Truly to serve and return all the King's Writs.

*Under Sheriff.*

6. Not to have to his Under-Sheriff, any of the Sheriffs Clerks of the year last past.

7. To

Nota, & quere how Sheriffs perform these two parts of their Oath.

7. To take no Bayliff, but such as he will answer for; and such *Bayliff.* as be true and sufficient Men in that County.

8. To make each of his Bayliffs to take an Oath, for the true exercise of his Office.

9. To receive no Writ unsealed: Nor any sealed, except by *Writ.* Justices having Authority to make Writs unto him, by the Law of the Land.

Gr. Cr. 18. 10. To suppress Heresies (called Lollaries) and therein to assist *Heresies.* the Ordinary, being required. See hic cap. 101. Some reasons why this Oath herein is fit to be amended, scil. the word Lollaries to be left out at the least.

See the St. 11. To be dwelling within his Bayliwick (or County) for the *To be resident.* time he shall be in this Office, except he be otherwise licensed by the King.

12. That he shall not let to farm his Sheriffwick, nor any Bay- *Not to farm.* liff thereof, 4 H. 4. c. 5. & 23 H. 6. c. 10.

Note, That by this Letting to Farm, is understood the assign- ing or granting of the Profits of his Sheriffwick, or Bayliwicks, so as the Grantee by such Grant taketh (or may take) the Profits to his own use. Vide hic cap. 3 & 117.

13. Truly to set, and return reasonable and due issues, after the *Issues.* estate of the persons.

\* Or by 14. To make the Panels \* himself; and of such persons as be *jurors.* his Under- next Neighbours, most sufficient and not suspect, nor procured.

15. Truly and effectually, with all diligence to execute the Sta- *St. Winch.* tutes of Winchester and of Vagabonds.

Concerning this last part of this Oath, the Statute of Winche- ster (made 13 Ed. 1.) commandeth that fresh suit be made, from Town to Town, and from County to County, after felons (scil. upon Robberies, Murders, Burning of Houses, and other felonies committed:) And that Night-watches be duly kept, for the ar- resting of suspected persons, (who are to be delivered to the Sheriff;) and that High-ways be enlarged, that felons and evil Doers may not lurk therein to do hurt, &c. and of all these things the Sheriff is to Enquire in his Town: See hic postea tit. Torn.

Now what else the Sheriff may or ought to do in these Cases; It seemeth by the Statute of Winchester, c. 1, 2 & 4. and by the Statute made 5 Ed. 3. cap. 14. That if any person suspected for felony shall be apprehended by the Country, upon such fresh Suit or Hue and Cry; or that any suspected person shall be arrested by the Constables or Townsmen upon their Watches by day or by night, and that such persons shall be delivered to the Sheriff, he then ought to inrol the same (F. Cor. 345.) And the Sheriff may receive them without damage and shall keep them safely (and may commit them to the Gaol) un- til they shall be acquitted in due manner, scil. until the coming down

of the Justices assigned to deliver the Gaol; (otherwise it shall be adjudged an Escape in the Sheriff;) and in the mean time the Sheriff shall enquire of such Arrests, and at the coming of the Justices they must Return such Enquests before the Judges of Gaol-delivery, which they have found, and the cause of the taking, with the Bodies of such Offenders; but Quære whether the Sheriffs shall enquire of such Arrests, &c. in their Town, or where else; for if it be in their Town, then by the Statute, 1 Ed.4. cap.2. they must deliver their Indiments to the Justices of Peace at their Sessions: *Sæ hic tit. Torn.* Again, the Justices of Peace do now usually deal with such Offenders, so as the Sheriffs are not \* now troubled with them; either to Inrol or Commit, or to Enquire of these Offenders, otherwise than in the Sheriff's Town, as it seemeth. \* Nota.

Also by the Statute of Winchester cap. 6. Sheriffs are commanded to follow the Hup and Cry with the County, and to keep Horses, and Armour so to do, *quod nota.*

Note further, That by this Statute of Winchester cap.1. It was commanded that Cries should be solemnly made in all Counties, Hundreds, Markets and Fairs, &c. The meaning whereof was, that Proclamation should be made in all Counties, and in all places where great assemblies of People should be, to warn them of this Statute of Winchester, and of the Pain therein contained, so as none might excuse themselves of ignorance, &c. But by the Letter of this Statute Proclamation was appointed to be made but once, which was executed presently after the making of this Statute: So that by force of this Statute, no such Proclamation is to be made at this day. But for that this Statute is one of the most beneficial that ever was made, for the suppressing of Robberies and Felonies; therefore by another Statute made not long after, scil. 28 Ed.1. cap.17. It was Ordained, that the said Statute of Winchester should be sent again into every County to be Read and Published four times in the Year, &c. Afterwards, for that these Malefactors and Mischiefers did still more and more increase, King Richard the Second sent the same Statute of Winchester again to be Proclaimed in every County: And besides, by a Statute made in the seventh year of his Reign (being now still in force) he further Ordained, that every Sheriff of England should in person four times in the year, proclaim the Statute of Winchester in every Hundred of his County, and in every Market-Town, by his Bailiffs, as well within Liberties as without: and this Statute of 7 R. 2. doth further ratifie and confirm the said Statute of Winchester in all points: Quære for the use. 7 R.2. cap. 6.

But what the Sheriffs stand bound to do by this last Article of their Oath concerning Vagabonds: (Or by their Office, by Vertue of any Statute now in force) save only to Arrest and commit them as suspected persons. *Sæ hic cap. 4.* Quære, Considering that by the Statute of 39 Eliz. cap. 4. All former Statutes made for the punishing of Vagabonds, are now repealed: And by that Statute of Repeal (nor by any other since) Sheriffs have no Authority, nor any thing now to do concerning them.

Before whom the Sheriff shall take his Oaths.

Wilk. 4.

**T**he High-Sheriff ought to take these Oaths (to the Supremacy, and for the due execution of his Office) before one of the Judges of the Assizes of that Shire whereof he is Sheriff, or before one of the Masters of the Chancery; and this should be done (scil. these Oaths should be taken by the Sheriff) so soon as his Patents be made (if the Sheriff be then in London,) for until he be sworn he may not intermeddle, nor take upon him to use or exercise his said Office: or else the Lord Chancellor or Lord Keeper of the Great Seal of England may make and direct a special Commission (viz. a Writ of Dedimus potestatem) under the Great Seal of England to any two Justices of Peace of the same County, whereof one must be of the Quorum, giving them Authority thereby to tender and administer the said Oaths to the new Sheriff in the County, and this now is usual.

And yet it seemeth such a Dedimus potestatem may be directed to any other person or persons: See Dyer 168. Bronker's Case, where a Dedimus (for this purpose) was directed to one Hide only; and so it is used in all the Shires of Wales, as may appear by the Statute made Anno 34 Hen. 8. cap. 26.

This Dedimus potestatem they may have from the Clerk of the Chancery which made the Patents.

But such Commissions to whom such a Dedimus potestatem shall be directed to take these Oaths, must certifie the same into the Chancery, at such day as the Writ commandeth them.

And the Certificate or Return of such Dedimus potestatem may be in this sort following.

*The Return of a Dedimus potestatem, to take the Oath of a Sheriff.*

**V**irtute istius brevis nobis directi (talidie, & anno, &c. infrascript') recepimus Sacrament' infranominat' A. B. Vicecom. Cantabr. de Officio illo bene & fideliter faciend' juxta formam cujusdam schedulæ, presentibus annex' prout interius nobis præcipitur ac prout breve istud in se exigit & requirit.

F. B. }  
& } Commission'  
M. B. }

Executio istius brevis (or Commissionis) patet in quadam Scheda Aliter. huic brevi annexa.

Nos F. B. & M. B. in Cancellariam Domini Regis humillime certificamus, quod virtute brevis Domini Regis nobis direct' & huic schedulæ annexat', quarto die mensis Decembr. Ann. Regni dicti Dom. nostri Caroli Dei Gratia Regis Angliæ, &c. apud C. in Comit' Cantabr. recepisse Sacrament' A. B. militis (in breve prædict' nominat') tam de Officio Vicecom. in dicto Com. Cantabr. bene & fideliter faciend' juxta formam schedulæ, brevi

brevi prædict' annexæ, quam Sacramentum specificat' in actu Parliamenti Anno Regni Dom. *Elizab.* nup. Reginæ Angliæ, &c. primo fact' secundum tenorem brevis & schedulæ brevi præd. similic' annex', & in omnibus prout in præd' brevi præcipitur.

F. B.  
 &  
 M.D.

These Oaths of the High-Sheriff may be taken befoze one of the Masters of the Chancery (without any Dedimus potestatem :) for a Master of the Chancery may ex Officio (as it seemeth) take any Oath which is Returnable into the Chancery. As (in common experience) if a Bill put into the Chancery against J. S. he may either have a Dedimus potestatem, directed to any person to take his answer in the County: or else he may go befoze any Master of the Chancery, who, ex Officio, may and usually do take the Defendants answer, and Return the same, &c.

I have also known a Master of the Chancery take these Oaths of the Sheriff; and then the Return thereof may be made as followeth,

*Contab.*

Ego Johannes Eden Magistr. Cancellar. in Cancellar. Domini Regis certifico, me die Novembr. Anno Regni Domini Regis Caroli, Dei Gratia Angliæ, Scotiæ, Franc. & Hiberniæ, 12 apud *Newmarket* in Com. Cantabr. recepisse Sacrament. Joh. C. Baronet. Vicecom. Com. præd. Tam de officio Vicecom. in dicto Comit. bene & fideliter faciend. Quam Sacram. specificat. in actu Parliamenti Anno Regni Dom. *Elizab.* nuper Reginæ, Angliæ, &c. Primo fact. In cujus rei testimon. huic præfenti certific. Sigillum meum apposui. Datum, &c. apud *Newmarket*, Die & Anno supradict.

I. B.

And if such Commissioners shall return the Commission (or Writ) and the Oaths to be taken, when they were not taken, this is finable in the Star-Chamber, Dyer 168.

Anno 1 Eliz. Bronker Sheriff of Wilts was sued for perjury in the Dyer 167. Star-Chamber (by information at the Queens suit) for a false return by him made of Sir John Thinne to be Knight of the Parliament for the said County, whereas in truth one Penruddoke was chosen by the greater number of Freeholders in the said County (in deceit of the County, and whole Realm) and it did appear upon examinations taken, that (the Sheriff) Bronker was never sworn to execute his Office, although there were a Dedimus potestatem directed to one Hide to give Bronker his Oath, but Hide had dissuaded him from taking his Oath in regard of the difficulty of the Articles or matters therein contained; and this matter by grave resolution in the honourable and great assembly of the Star-Chamber was decreed against Bronker in manner following, that is to say, first for the contempt of the ancient Law (sc. that every Sheriff was to take such an Oath, in incepto officij, in the beginning of his Office, or befoze he should execute his office) Bronker was adjudged to pay for his fine to the Queen an hundred pounds, besides the imprisonment of five weeks; and also he was adjudged to pay another hundred pounds to the Queen according

ing to the Statute for his false return and to be imprisoned for one year without Bail; and Hide was fined at twenty Marks besides imprisonment: And also Bronker and Penrubdoke were bound by Recognizance, to stand to the Arbitrement of four of the Noble men for the hundred pounds due to Penrubdoke.

So if the Sheriff shall exercise, use, supply or occupy, his said Office, before he hath taken both these Oaths (sc. to the Supremacy, and concerning his Office) he is finable in the Star-Chamber, Dyer 168.

Also if the Sheriff shall not perform his Oath concerning his Office in every behalf, he shall not only be in danger of perjury, but also to be fined, &c. in the Star-Chamber, See Dyer 61 & 168.

Yet see Co. 11. 98. That a man shall not be charged in any Court Judicial, for the breach of a general Oath, which he taketh when he is made an Officer or Minister.

There is a third Oath tending to the declaration of that duty, *The Oath of* loyalty and obedience, which every well affected Subject, by the *Allegiance.* Law of God, and bond of allegiance, ought to bear to his Sovereign, which Oath is by force of the Statute 3 Jacobi Regis cap. 4. And is to be taken by all Sheriffs (and other Officers and Ministers of Justice) whensoever it shall be lawfully tendered to them; and this is to be taken (by the Sheriff) before one of the Chief Justices (of the King's Bench or Common Pleas) or before one of the Justices of Assize of the same County, whereof he is Sheriff, or before such other person as the Lord Chancellor or Keeper of the Great Seal shall thereto authorize, by Commission or Writ of Dedimus poststatem.

The form of the Oath of Allegiance you may see at large, in the Stat. 3 Jac. c. 4.

After that the Sheriff hath taken the said Oaths to the Supremacy, and for the due execution of his Office, then upon the Writ of discharge delivered to (his predecessor) the old Sheriff, (or at or before the first County Court to be kept by the new Sheriff) the new Sheriff must take over from the old Sheriff, all his prisoners, (which are in the Gaol, by their names,) and all his Writs precisely, by view and by Indenture to be made between the old Sheriff and the new Sheriff; in which Indenture all the causes which the old Sheriff hath against every prisoner, must be set forth and delivered, at the peril of the old Sheriff, or else the new Sheriff needs not to take notice of any that is omitted and left out of the Indenture; for he is not chargeable with it, but the old Sheriff only, as it appeareth in Westby's Case Co. 3. fol. 72.) against the Sheriffs of London, where the case was this: One Buston was in execution under the custody of (Skinner and Hatcher) the Sheriffs of London, as well at the Suit of one Dighton, as at the Suit of Westby the Plaintiff, and the said Skinner and Hatcher the Defendants, at the end of their year, delivered over the Body of Buston (amongst other prisoners) to the new Sheriffs by Indenture, in which Indenture the Execution at the Suit of Dighton was mentioned, but the Execution at the Suit of Westby the Plaintiff was omitted, and after Buston escaped, and it was adjudged that the old Sheriffs (Skinner and Hatcher)

4.  
He must take  
by Indenture  
the Prisoners  
and Writs.

Crom. 203.  
Co. 4. 72. a.  
Co. 3. 72.  
Westby ver.  
Skinner, Cr.  
El. 365.  
Rolls 2.  
part 457.  
Chandler  
ver. Thompson,  
Hob.  
266. Eger-  
son, ver.  
Morgan, &  
al' Bulstrode  
1. part. 70.  
usque 79.  
Smalman,  
ver. Lane,  
Leon. 2.  
part. 54.

*Escape.*

Hatcher) should be charged with this escape : for when the Body of Buston was delivered to the new Sheriffs as to execution at the suit of Dighton only, Buston was thereby out of custody of the new Sheriffs for the execution of Westby, for that the prisoner was not delivered to the new Sheriffs (nor they charged with him) for the execution of Westby, the Plaintiff; and although Buston were still within the Gaol (at the suit of Dighton) yet this was adjudged an escape in Law, as to Westby, for that Westby (in whom there was no default ought) not to be without remedy in this case.

Also in this former case of Westby's, it was resolved, that until the Prisoners be delivered to the new Sheriff, they remain in the custody of the old Sheriff, notwithstanding the new Letters Patents made to the new Sheriff, and the Writ of discharge, and the Writ of delivery directed to the old Sheriff. *Co. 3. 72. Vide Dyer 335.* Yet see hic infra, that the old Sheriff is punishable for detainour of his Prisoners, after his Writ of discharge delivered to him.

*Notice.*

Also it was there resolved that the old Sheriff ought to give notice to the new Sheriff of all and every the Executions, which are against any Prisoner in their custody, although the Executions be of Record; and that the new Sheriff is not to take notice of them at his peril, but shall be charged only with such whereof the old Sheriff gives to the new Sheriff notice.

If the old Sheriff shall give notice to the new Sheriff, of the executions which are against any Prisoner by word only, or by some note in writing under the old Sheriff's hand; or under the hand of his Under-Sheriff, and not by Indenture, and the new Sheriff be content to accept of such notice; it seemeth sufficient, for *volenti non fit injuria*; And yet the new Sheriff may compel the old Sheriff to make such delivery by Indenture; and so run all the Writs, de Brevibus & Rotulis liberandis, in the Register. *See hic fol. Co. 3. 72. Regist. 295*

The Sheriff hath one in Execution for Debt, in another Man's House (and not in the Gaol) and the new Sheriff will not receive the Prisoner at that House, but in the Gaol, and after the old Sheriff hath a Writ of discharge delivered to him, there the Prisoner is presently out of Execution, and this is an Escape in the old Sheriff, and if he shall detain him after that he hath his Writ of discharge, the Prisoner may have his Action of false Imprisonment against the old Sheriff, *Crompt. 204.*

And so note, That the new Sheriff is not bound to receive the Prisoners from the old Sheriff but only at the Gaol, and in no other place; And yet if the old Sheriff shall deliver his Prisoners to his Successor when he is chosen, who receiveth the Prisoners out of the Gaol, the old Sheriff shall be discharged by this delivery. *See 11 R. 2. Fitz. Atturney 61:* Where the old Sheriff had taken a Prisoner upon a *Capias utlagatum*, and had delivered him to his Successor when he was chosen, (who received him, and was possessed of his Body) but he had not the Body at the day, &c. Here the old Sheriff was discharged, *Crompt. 214.*

But

But it was in Westbys's Case resolved, that if a Sheriff hath in his custody divers persons in execution, and dieth in the time of his Office, and after a new Sheriff is made, here the new Sheriff at his peril ought to take notice of all the Executions which are against any person which he finds in the Gaol: but this is by reason of the necessity, for that there is no person to make delivery to him of them, or to give him notice, and besides the new Sheriff may take notice himself of all Executions, they being upon record.

Also in the former case the Sheriff (it seemeth) is to take notice of all other prisoners in the Gaol, and of the causes of their commitment; and so the new Sheriff (upon the death of the old Sheriff during the time of his Office) is chargeable without either delivery of the Prisoners, or notice of the causes of their commitment.

And so it seemeth for the delivery of the Writs, upon the death of the old Sheriff during the time of his Office, the new Sheriff is to take notice of all other Writs, (and of the contents thereof) which shall be in the hands of his Predecessor, or of his Under-Sheriff.

Also in the afore recited Case, it was resolved, that if a Sheriff die in the time of his Office, and before that another is made Sheriff, there if a prisoner who is in Execution shall break the Gaol, and Escape, and go his way, yet this is no Escape, for that by the death of the Sheriff, all his prisoners were in the custody of the Law, until a new Sheriff be made; and the prisoner may be taken again in Execution at any time after, wheresoever he shall be found. Escape.

But if such prisoners shall be in the Gaol at such time as the new Sheriff is made, there the new Sheriff (so soon as he is appointed by the King, or at least so soon as he hath received his Patent) seemeth to be chargeable presently with them, without any delivery, or notice made or given to him, of the said prisoners, or of the causes of their commitment; and if such prisoners shall after get out of the Gaol, this is an Escape; yet if it be without the consent of the new Sheriff, or his Gaoler, then they also may be taken again at any time after, *Et hic postea cap. 29.*

Note also, That by the death or Resignation of the King, the Authority of the Sheriff (and of all his Officers) doth determine and cease, Co. 7. 30. Dyer 165. And therefore it is used presently (in the next King's time) to sue out new Patents of this Office, and of assistance. Br. Office. 25. Co. 7. 30. But if in the interim between the death or Resignation of the King, and the time that the Sheriff shall sue out his new Patent, a prisoner shall break the Gaol and escape, yet it seemeth that the Sheriff is chargeable for this escape; for he having the prisoner once in his Gaol, altho' by the Death or Resignation of the King, the Sheriff can execute no Process, &c. until he hath sued out his new Patent, yet he is safely to keep all the King's Rights of the Crown which shall then be in his custody, and also all prisoners; and as he may justify the detaining and keeping of all prisoners committed to him before, and then in his custody, so he may, nay ought at his peril to make his Gaol safe, so that his prisoners escape not.

*The form of an Indenture for setting over of Prisoners, and Writs between two Sheriffs.*

**T**His Indenture, &c. Between R. S. Esquire, late Sheriff of the County of Cambridge of the one part, A. B. Knight, now Sheriff of the said County on the other part, witnesseth, That the said R. S. by vertue of his Majesty's Writ of discharge of his late Office) to him directed, hath delivered and set over unto the said A. B. these Writs following, That is to say, A *Capias versus W. F. Return. O. & ab. Hillarij ad sectam Johannis Smith, &c.* Together with the Bodies of Jo. N. in Execution at the Suit of G. H. for a Debt of Twenty and two pounds, and J. H. at the suit of C. D. in Execution for Ten pounds, and R. G. in Execution as well at the suit of Jo. Dighton for a Debt of One hundred pounds, as also at the suit of N. West for a Debt of Forty pounds, &c. In Witness whereof, &c.

All the Writs which are set over in the Indenture between the Sheriffs, if they have been executed by the old Sheriff, then they must be returned by him or in his name; and indorsed, or subscribed under by the new Sheriff thus:

Istud Breve prout indorsatur mihi deliberatum fuit per R. S. Armiger. nuper Vic' prox' predecessor. meum in exit' ab Officio suo.

A. B. miles Vicecom.

Palmer  
versus  
Mar. Tr.  
39 El. B.R.  
Rolls 2  
part. 457.  
Egerton  
versus  
Morgan &  
al. Bullstrode  
1. part. 70.  
usque 79.  
Dyer 355.

If the Writ of discharge of the old Sheriff be brought into the County and delivered to the Clerk of the County (or High-sheriff) sitting in the County Court in the absence of the High-sheriff, Quære whether the old Sheriff be thereby discharged of his Office ipso facto, or not: It seemed to Manwood and Dyer, that the High-sheriff's Authority ceased by such publick delivery of the Writ of discharge in the County Court, where every man is bound by Law to take notice, but yet if by such delivery of the Writ the old Sheriff be discharged, then there shall be an escape in the old Sheriff of his Prisoners, against his will, for the old Sheriff by intentment was ready to deliver them, &c. Ideoque Crompt. 203.

Also by the words of the Statute of 12 Ed. cap. 1. it seemeth that the old Sheriff may execute his Office, until his Writ of discharge be delivered to him: See also the Statute of 17 Edw. 6. hic postea cap. 3.

*Après son discharge son act void.*

But if the old Sheriff after he is discharged, &c. shall make his Warrant or Precept to any of his (late) Bailiffs, or Officers to Arrest another, and the Officer by force thereof shall Arrest the party, an Action of false Imprisonment will lie against both the Sheriff and Officer for such an Arrest, Crompt. 205.

The old Sheriff Returned the Proclamation upon an Exigent, after that he was discharged of his Office, and by the Judgment of the Court the Outlaw was void, and the party was discharged. Dyer 41.

What

What Return or other Act, the old Sheriff may do, after that the new Sheriff is chosen.

A Habeas Corpus was delivered to the Sheriff of N. before the day of the Return whereof the new Sheriff took the Office upon him, and the old Sheriff having before served the Writ, brought it into the Court, and there shewed that the new Sheriff would have embezzled the Writ to have caused the old Sheriff to have ben amerced: whereupon the new Sheriff was called, and the Writ so served was delivered to him in Court, and a special entry thereof made in discharge of the old Sheriff, &c. 22 E. 4. f. Return 33. But now all Writs are by view and by Indenture precisely to be set over by the old Sheriff to the new. Ut patet hic antea.

If the Return of the old Sheriff happen to be Erroneous, and that a new Sheriff be chosen, yet the Court may cause the old Sheriff, or his Under-Sheriff, Clerk or Deputy, to amend the same, 33 H. 6. f. Amendment 40. See hic. c. 41.

Cr. Jac. 73.  
Rolls tit.  
Execut.  
893.

I have seen a Report of a Case adjudged in Anno 44 Eliz. Rot. 308. between Ayer and Aden, Mr. Ayer being possessed of certain Oade, and Judgment given against him at the suit of one Hopper, who had sued a Fieri fac. against Ayer, by vertue whereof the Sheriff seised the Oade, and paid parcel of the Money recovered, but returned not the Writ; then the Sheriff was removed and another Sheriff chosen; and after the Writ of discharge directed and delivered to the old Sheriff, he sold the Oade to Aden the Defendant, who justified thereby in an Action of Trover and Conversion; and whether this sale by the old Sheriff after he was removed should alter the property, was the question: And it was adjudged, that the old Sheriff might sell the Oade although he were out of his Office, for that he was chargeable to the party Plaintiff. And they grounded the judgment much upon the Book of 32 H. 6. 36. f. Process 99. where they said that the Writ de Distr. nuper vic. gave him no Authority, but was only to compel him to do that which he had power by the Law to do, and thereupon judgment was given that Ayer the Plaintiff should be barred.

Dixon's  
Case in  
Litch. 117.

So then the old Sheriff after he is discharged, may notwithstanding sell any Goods formerly extended by him whilst he was in his Office.

##### 5. The Sheriff is to Read his Patents and to name his Officers.

The new High-Sheriff at the first County Court which shall happen to be after Election and the discharge of the old Sheriff, must read (or cause to be read) his Patent and his Writ of assistance; and must also nominate his Under-Sheriff (or County Clerk) and depute, appoint, and proclaim four Deputies (at the least) in that County to make Kieplevins, for the ease of the County; which Deputies ought to dwell not past twelve Miles distant one from another, in every quarter of the County one, to grant Kieplevins in the Sheriff's name, and to make deliverance of distresses when need shall require: 5. He must read his Patents.  
And name his officers.

require : and this appointing of Deputies is by force of the Stat. 1 & 2 Phil. & Mary c. 12. And these Deputies shall in the Sheriffs name make Replevins, as the Sheriff himself may do. 1 & 2 P. & M.

And the Sheriff for every month that he shall lack such Deputies shall forfeit five pounds, &c. And yet such Deputies, the Sheriff may appoint at any time within two months next after he hath received his Patent.

But rather than the High-sheriffs (being Gentlemen of worth) should hazard their Oaths, or Credit in their Country, they had better (in regard thereof, and for their better discharge of their Duties both to God, and to their Prince in the execution of their Office) to keep their Office, and their Under-sheriff in their Houses, so as they may take a continual surbey themselves, as well of their Office, as of their Under-sheriff, and other Officers, rather than to trust their Officers, especially their Under-sheriff, being a Stranger, with the whole execution of their Office, and upon Bond and Covenants, which by the Statute of 23 Hen. 6. c. 10. are thought by many Opinions to be void, or voidable at least, (but see more concerning such Bonds, &c. hic postea, cap. 96, 97.) And if those Bonds prove not good, then a scold, or an ignorant Under-sheriff may hazard the undoing of his High-sheriff.

*Good advice  
to keep his  
Office in his  
House.*

And therefore if the High-sheriff will sleep quietly, and take his repose in safety (whether he shall keep his Office and his Under-sheriff in his House, or no) he shall do well and wisely to look for, and to take good security from his Under-sheriff, before he do trust him with his Office; which security is commonly by Bonds and Covenants taken by the High-sheriff, of the Under-sheriff and his friends; the form of such Bonds and Covenants. See hic postea, cap. 96, 97.

#### 6. The Sheriff ought to have a Deputy or Attorney in every of the Courts at Westminster, &c.

*6.  
He must have  
Deputies at  
Westminster.*

Also the Sheriff before he shall return any Writ into the Chancery, the King's Bench, the Court of Common Pleas, or the Exchequer, ought to make and have an Attorney, or Deputy of Record, in every one of those Courts of Record, there to receive all manner of Writs and Warrants to be delivered to them, viz. all such Writs and Warrants as shall be directed to the Sheriff for whom such Deputy is appointed; and if any Sheriff shall do to the contrary, he shall forfeit forty pound (to the King and Informer) for every such default, and treble damages to the party grieved or endamaged: and this making of Deputies is by force of the Stat. of 23 H. 6. c. 10. 23 H. 6. c. 10.

And it seemeth such Deputies must be made by Warrant of Attorney from the High-sheriff: And yet the Sheriff may make his Deputy without Writing, by the Opinion of Brudnel 21 Hen. 7. fol. 37. a.

But

But Sir Edw. Coke lib. 9. fol. 51. sheweth, that it was resolved by the Judges, that he which maketh a Deputy, must make him by writing.

And these Deputies must give their attendance in convenient and due manner, in, and upon all and every of the said Courts.

P. Exigt. 7. Also every Sheriff of every of the twelve Counties of Wales, and of the Counties Palatine of Lancaster, Chester, and the City of Chester, shall have in every of the Courts of the King's Bench, and Common Pleas, one sufficient Deputy at the least, to receive all Writs directed to such Sheriff, for whom the same Deputy or Deputies shall be appointed, in like manner and form, and upon like pains as by the Laws and Statutes of this Realm, other Sheriffs of other Shires within this Realm of England be bound to have in either of the same Courts: And all Writs of Proclamation shall be delivered unto every Deputy of Record in the same Courts: And also like fees shall be paid for making every such Writ of Proclamation, and for the inrolling of the Record, as is limited in the Statutes of 6 H. 8. 1 E. 6. 10. 5 E. 6. 26. 23 H. 6. 10. Wales and Counties Palatine.

*Les vic. de Chester & Lancaster, & Counties Palatine, doivent mitt. eins leur warrant de atturny in le Court le Common Bank, & doivent estre attendant la. Et ceo Court direct Proces al' Chamberlain de Chester immediatement & il doit escrier al' vic. Et si le vic. la levy argent en execution & ne return aucun chose al' Chamberlain, per que Chamberlain return a ceo Court Mandavi vic. qui mihi nullum dedit responsum, sur suggestion fait in ceo Court que le vic. ad levy le argent, ils ambideux videlicet le Chamberlain, & le vic. sur un jour done desire in Banco appear, la de estre examin sur ceo. Per Nelson Preignatory, Anno 29 Eliz.*

### C A P. III.

**F**or that in former times the Sheriffs in divers Counties of England, having their Offices, some for term of years of the King's grant, and others trusting of longer continuance in their said Offices, were greatly encouraged, and did take upon them to do many and divers oppressions to the King's people, and evil service to the King: Therefore it was ordained and established by divers Acts of Parliament as followeth.

14 E. 3. c. 7. First, That no Sheriff,\* Under-sheriff, nor Sheriffs Clerk, shall  
28 E. 3. 7. tarry or abide in his Office (or shall occupy the said Office) above Note above one year.  
\* 42 E. 3. 9. one year, upon pain to forfeit two hundred pounds yearly as long  
23 H. 6. 8. as he occupieth the Office: And every\* pardon made for such offence  
\* Pardon of forfeiture shall be void; and all Letters Patents made to occupy  
to such offenders, such Office above one year shall be void, any words or clause of non  
granted. obstante put into such Patent notwithstanding. And whosoever shall  
28 Hen. 6. presume to take upon him to occupy the Office of a Sheriff above  
c. 3 & 8. one year, by force of such Letters Patents, shall be disabled for ever  
E. 4. c. 4. after to be Sheriff within any County of England: And every man  
by Act of Parliament. which will, may sue for the said sum of two hundred pounds so forfeited against such Sheriff, Under-sheriff, or Sheriffs Clerk, in any Action

Action of Debt in his own name, and the King shall have the moiety of all that which is recovered, and he that sueth shall have the other moiety, 23 H. 6. c. 8. & 6 H. 8. c. 18.

And yet the King by his Prerogative may dispense with these Statutes, and may grant the Office of a Sheriff for years, life, or in fee. See 2 H. 7. f. 6. Br. patents, 109. Co. 7. 14. & Co. 9. 97. Br. prerog. 37. & Fitz. Grt. 33. & Plo. 502. b. and Sir Fr. Bacon, page 75. saith, That it is an inseparable Prerogative of the Crown to dispense with politick Statutes, &c.

Also persons inheritable to the Office of Sheriff, and Under-Sheriff, and other Officers in London and Bristow, are excepted out of these Statutes. See hic postea. 6 H. 6. c. 18

But for that the High-Sheriffs being chosen yearly the morrow after All-Souls, divers of them sometimes have not their Patents, nor take their Oaths a long time after; Therefore it was enacted by other Statutes (made in the time of Ed. 4.) that every old Sheriff of every County shall have full power, and may occupy his Office (sc. may execute and return any Writ, Precept or Warrant, from or out of any the King's Courts of Record at Westminster delivered to him) as also to do and execute every other thing to his Office of a Sheriff appertaining, during the Terms of Saint Michael and Hillary, (after the year that their Office is ended) unless before the same time he be lawfully discharged, sc. unless he hath a Writ of discharge delivered him of his Office of Sheriffwick: And they shall not be there of damnified by force of the aforesaid Statute of 23 H. 6. c. 8. 12 E. 4. c. 1. 17 E. 4. c. 6 Comp. 208. b.

Not within  
three years.

Also it is Ordained, That no man which hath ben Sheriff (or Under-Sheriff) of any County by one whole year, shall be chosen Sheriff (or Under-Sheriff) of that County again within three years next ensuing, (except there ben none other sufficient of possessions and goods to answer the King and his people within the said County,) upon pain of forfeiture of two hundred pounds by him that shall occupy his Office contrary to the effect and intent of any of the Statutes afoze recited. 1 R. 2. c. 11 23 H. 6. c. 8

But the Sheriffs and Under-Sheriffs within the City of London, and of such Counties in which they be inheritable to the Office of Sheriff, are excepted out of these former Statutes. 23 H. 6. c. 8

Must be resident.

Every Sheriff shall dwell and continue in his own person within his Bailiwick or County, for and during the time he shall be Sheriff, (except he be otherwise licensed by the King) and this the Sheriff is bound to do as well by his Oath, as by the Statute of 4 H. 4. c. 5.

And yet if the Sheriff being out of his County shall make a Pannel, or make any return, &c. it is good. See 9 H. 4. f. 1.

But if the Sheriff be beyond the Sea (sc. at Calice, or elsewhere) and maketh a Pannel, or any return there, and sends it into England, this is not good, for that he is no Officer but only in England. 9 H. 4. f. 1. Br. Officer 7

Note,

Plo. 37.  
Rolls 2.  
part 163.

Note, That a Sheriff of one County hath no Authority or power within another County; neither may any other Authority or Officer within this Realm, exceed their limits and bounds: And yet if the Sheriff by force of the King's Writ, shall be commanded to carry his Prisoner out of his County, &c. And thereupon shall carry or send by Bailon, his Prisoner to the place appointed him, altho' he shall convey him through divers other Counties, yet the Prisoner shall be said to be in the custody of the first Sheriff, in every of those Counties, and so to such a special intent, the Sheriff shall have Authority in another County.

Ibid.

So if a Prisoner of his own wrong shall make an escape, and fly into another County, the Sheriff or his Officers upon fresh suit may take him again in another County, &c. See hic postea.

\* Hundreds  
and Wapen  
takes be  
all one.  
Camb. 159.

Norton ver  
sus Syme,  
Hob. 12, 13  
14.

No Sheriff shall assign, grant, or let to farm his Office in any manner, nor his County, nor any of his Bailiff-wicks Hundreds, <sup>Must not let his Office.</sup> nor \* Wapentakes: (nor any of his Courts, as it sameth) nor any part thereof. And this the Sheriff is restrained to do as well by his Oath, as by Statute, upon pain to forfeit forty pounds: See the Statutes 9 Ed. 2. Lincoln, *de Vicecomit.* 2 E. 3. ca. 12. 4 E. 3. ca. 15. 14 E. 3. c. 9. 4 H. 4. c. 5. 23 H. 6. c. 10. & 6 E. 6. cap. 16. And the Justices of Assize may enquire thereof, and punish the same, 4 E. 3. c. 15. Abr. d'Ass. 136. Or they may be punished in the Star-Chamber. And yet the Sheriff may make and appoint under him his Under-sheriff, and his Bailiffs, and Deputies, for all these do use their place in the right of the Sheriff, and as the Sheriff's servants: See hic c. 1. But a Lessee or Farmer occupieth the place, or things demised in his own right. See Fineux 20 H. 7. fol. 12. b. & Dr. & Stud. 136. And therefore the form of the Indenture made at this day, or heretofore made between the High-Sheriff and his Under-Sheriff, are not warrantable by these Statutes: For by the former Book, if the Sheriff letteth his County to his Under-Sheriff, or Covenants with him that he shall have the profits of the County, or part thereof, for a certain time, tho' there be no Rent received, &c. Yet this is against the Statute: For the intent of the Statute is, that Sheriffs shall keep their Counties (sc. the profits thereof) in their own hands, and every part thereof. Fineux 20 H. 7. 13.

Br. Grants  
39.

By the Book 21 Hen. 7. fol. 36. The County is but the profits of the County, and the Issues coming thereby; so that for the Sheriff to let the profits of his County, or any of his Bailiff-wicks, or any part thereof, is forbidden by the former Statutes: See Br. Grants

20 H. 7. 12.  
b. 13. a.  
20 H. 7. 12.  
a. Croke  
137.

Now the Revenues or Issues and Profits of the County pertaining to the Office of a Sheriff, seem to be Fees, Annuities, Rents, Farms, Issues, Fines, Amerciament, Echeats, Estrays, &c. the Goods of Felons and Fugitives, and other like Casual profits. But quare whether the Sheriff be but to gather up these, and is to be accountable for these profits to the King; or that he farmeth these of the King under the name of Viconts, and payeth Rent for them, 20 H. 7. 12. See hic c. 9.

Note,

Note, Where the King maketh a Sheriff, sine Compoto, there the Sheriff shall have the Revenues which belong to his Office to gather to his own use, Co. 11. 82. Otherwise he shall be accomptable for them: But it seemeth he is not accomptable for them, saving in a gross sum for the Farm of the profits of the County, Keilw. 173. And yet see the form of the Sheriffs Oath for passing of his Account (hic cap. 125.) by which they seem to be accomptable for divers of these things particularly.

Bowles and  
Berri's  
Case, Rolls  
1. part. 183

Now whether a Lease made by the Sheriff of his Office or County, &c. only by parol, be contrary to these Statutes or no, see the Book 20 Hen. 7. fol. 12. & 21 H. 7. fol. 36. pro & contr. But however, such a Lease or agreement by parol, seemeth neither safe for the Sheriff, nor warrantable by his Oath,

Also for that this Statute of 23 H. 6. is penal, and every penal Statute shall be taken strictly, therefore by some opinions, where the Sheriff shall let parcel of his County, or parcel of the profits thereof, and shall reserve part of the profits to himself, there he is not within the danger of the Statute, except he let the whole: But others hold the contrary, for that otherwise he might let parcel to one, and parcel to another, and so the Statute should be of little or no effect.

Penal Statutes.

And accordingly it is observed by the Right Honourable, and late Reverend Judge Sir Edw. Coke, in his eleventh Book, fol. 34. That it is frequent in our Law Books, that penal Statutes have been taken by intendment, to the end that they should not be illusory, but should take effect according to the express intention of the makers of the act, for the advancement of Justice, and in suppression of crimes and hainous offences.

#### C A P. IV.

##### The Authority and Power of the High-Sheriff.

Vicecomes est Regis Officialis qui ad Comitatus gubernationem quotannis constituitur. Et partim Judex est, ad causas scilicet minores quæ ejus jurisdictioni subsumt: partim Minister & Mandatarius Regis. Cow. See plus hic cap. 1.

The authority and power of the Sheriff is in some cases Absolute or Judicial, and in some other cases Ministerial.

And first concerneth his Absolute power.

Absolute or  
Judicial.

No Sheriff shall hold Pleas of any thing pertaining to the King's Crown (by the Statute of Magna Charta 17.) i.e. they shall not hold Plea of any Felony or Treasons, Vi & Armis, nor of any Freehold or Land; nor any Plea of any thing touching the Crown, nor of any thing which is against the Peace of our Sovereign Lord the King, his Crown or Dignity: which notwithstanding must be understood to this purpose, i.e. That Sheriffs

Mag. Char.

Magna  
Charta,  
ca. 17.

Sheriffs cannot hear and determine the Pleas of the Crown, &c. or Plea of Land or Trespals, Vi & Armis: But in his Turn he may enquire of divers things touching the Crown, and of matters against the Peace, &c. *Sæ* hic cap. 107, 108, & 109.

For by the same Stat. cap. 35. the Sheriffs of every County may hold their Turn (or Court Leet) in which Court, the Sheriff hath a Judicial power, and therein they may enquire of Treasons, Homicides, and other felonies, and common Trespases, whereof *Sæ* hic postea tit. Sheriffs Turn, & Stat. 52 H. 3. cap. 24. But they shall take no Indictments (by Commission procured at their own Suit) but only in their Turns, Stat. 28 Ed. 3. cap. 9.

Appeals of Robbery, or other felonies, and of Wapsem, and Rape, may by Bill, be sued in the County Court at this day, as it seemeth. *Sæ* hic cap. 11.

By the ancient Common Law (before the making of the Statute of Magna Charta) the Sheriff, and Coroners were Judges, and in their Turn, Sheriffs, and in the County Court, the Sheriff and Coroners together, did hold Plea of felonies, and other things pertaining to the Crown. *Sæ* Abr. d' Ass. fol. 68. Finch. 115. 125, & Stamf. 55. 64. plus hic cap. 111.

The Sheriff also at this day, may hold Plea of Lands in his County Court by a Justices, but otherwise he cannot. *Sæ* hic tit. County Court.

The Sheriff by Plaint also may hold Plea without any Writ in his County Court, de Averis captis & detentis, &c. which Plea properly belongeth to the Crown. *Sæ* hic postea, cap. 3, & 114.

*Sæ* more hic tit. Sheriff's Turn, how Sheriffs may there Imprison, Fine, Bind over, and otherwise punish Offenders. And this Office of a Sheriff one calleth it Judiciaria Dignitas, Co. Lit. 168.

Also the Sheriff in his County Court may take a Recognizance between party and party, &c. *Sæ* hic tit. County Courts.

And by the ancient Laws of this Realm, the Sheriff might let to Mainprise by Recognizance, such as were in Prison for the Peace.

By an old Statute, he which hath a Pardon for any manner of Felony, must within thre months, next after the making of the same pardon, come before the Sheriff and the Coroners of the County where the Felony was done, and shall find six good and sufficient Mainperners (or Sureties) for whom the said Sheriff and Coroners will answer, that he from thenceforth shall bear himself well and lawfully (or be of good behaviour.) And the Mainprises shall be Sealed and Returned (by the Sheriff and Coroners) into the Chancery within thre weeks after the end of the said thre months; otherwise such pardon shall be void, Stat. 10 E. 3. cap. 3. vide 3 H. 7. fol. 7. a. Br. Cor. 134. *Quære del use a ceo jour.*

To keep the  
Peace.

Again every Sheriff is by the Common Law a principal and Co.L. 168.  
Special Conservator of the Peace in every place within his County,  
and hath committed unto him the custody of his County for the time  
that he is Sheriff, and is to see the Peace thereof kept and main-  
tained; And upon request to him made, he may command and cause  
another to find Sureties for the Peace, and may take the same  
Surety by Recognizance (to the use of the King) and that ex Officio,  
Fitz. 81. d. Pea, all Obligations that he takes for the preserving  
of Peace, or to that end, are as Recognizances in Law, *Terms del*  
*Ley*, tit. Vic. Kirch. Return 44.

Again, the Authority of the Sheriff is by Commission of Record,  
by which the King commits to him Custodiam Comitatus (and so  
the keeping of the Peace, and Administration of Justice is com-  
mitted to him, as is here before shewed, &c.) And all commissioners  
who have Authority to keep the Peace, or to sit or deal in matters  
of Justice for the Common-wealth, may take Recognizances. Vide  
Br. Recog. 5 & 18.

Upon a special supplicavit directed to the Sheriff, he may take a  
Recognizance by the Opinion of Danby, 9 E. 4. 31. and Mr. Broke  
abridging the Case, giving this reason thereof, for that the supplica-  
vit is a Commission to the Sheriff, and Commissioners may take  
Recognizance, Br. Recog. 5.

Such persons as shall be apprehended upon suspicion of Felony,  
either by the Country upon fresh Suit, or Hue and Cry, or by  
Watchmen, shall be delivered to the Sheriff, who may commit  
them to the Gaol, &c. hic cap. 2.

Pea the Sheriff may apprehend, arrest, and commit to Prison  
all Mischangers, and all such as within his Jurisdiction (sc. within  
his County) and in his presence, shall in any sort break, or attempt  
to break the King's Peace: and may command the Aid and Force  
of others to Arrest such Offenders, and may cause them to find  
Sureties for the Peace.

Also if one shall threaten me of Life or Member, and that I 12 H. 7. 17.  
shall complain to the Sheriff thereof, the Sheriff may cause him  
to find Sureties for the Peace, and may set him in the Stocks,  
quousque he shall find Sureties, &c. 44 E. 3. F. Barr. 202.

So if the Sheriff shall see one assault another, &c.

So if any Man shall make an Assault upon the Sheriff himself.  
24 5 H. 7. 6.

Also when any of the King's Enemies shall come into the Land,  
the Sheriff in defence of the Realm, may command all the people  
of his County to attend him; and he and they are to attend the  
King to Defend the Land.

And when any Rebellion, Insurrection, or riotous assembly of  
People shall be within the Land, the Sheriff may raise the power  
of his County to apprehend such Malefactors. &c. hic postea.

Bur

1 M.ca 8.  
Rolls 1  
part 237.

Camb. 207

1 Ed. 6.

But yet a Sheriff ought not (in other things) to execute the Office of a Justice of Peace in the same County where he is Sheriff during the time that he is Sheriff: And all and every acts to be done by any Sheriff by Authority of any Commission of the Peace during the time of his Sheriffwick shall be void and of none effect; but if he be put into the Commission of the Peace before he be Sheriff, and then he is chosen Sheriff, and that Commission of the Peace continueth after that he is discharged of his Office of a Sheriff, Quære if he may not then sit or execute the Office of a Justice of Peace by force of that Commission, without taking a new Oath? It seemeth he may; for first by the Stat. of 1 Ed. 6. 7. it was ordained and enacted in these words following, sc. That albeit any person or persons being Justice of Peace, &c. shall fortune to be made Sheriff, that yet notwithstanding he and they should remain Justice and Commissioner, and have full Power and Authority to execute the same in like manner and form as he or they might and ought to have done before the same Statute.

1 Mariz.

After the making of which Act, divers persons being in the Commission of the Peace were also made Sheriffs of the same County, and did exercise either of the said Offices, which seemed not to be convenient, and therefore it was after enacted by the Statute made, 1 Mar.c.8. That no manner of person having, using, or exercising the Office of Sheriff of any County, shall use or exercise the Office of Justice of Peace by force of any Commission, or otherwise, in any County where he or they shall be Sheriff during the time only that he or they shall use or exercise the said Office of Sheriffwick, any thing in the said former Act (made 1 Ed. 6.) notwithstanding.

So now the making of a Justice of Peace to be Sheriff of the same County doth not determine the Commission of the Peace, for then the Authority of all other the Justices of the Peace of the same County should be thereby determined; but this seemeth only to disable the person being Sheriff to meddle as a Justice of Peace during such time only that he shall be Sheriff of the same County; and that the Commission of the Peace need neither to be renewed, nor the late Sheriff newly sworn for the execution of the Office of a Justice of Peace, but he may again as before execute that Office by vertue of the former Commission of the Peace.

Rolls 1.  
part. 237.

But every Sheriff (by the Common Law of this Realm) may Arrest Felons, do, and is bound to do his best endeavour for the conservation of the King's Peace, and may and ought to Pursue, Apprehend, Arrest and Impzison all Traitors, Murderers, Robbers, and other felons, and all such others as do break, or go about to break or disturb the King's Peace within his County (as is before shewed) and to that purpose the Sheriff may take (of that County where he is Sheriff) any number that he shall think meet to aid and assist him: and every Man being required ought to be aiding therein to him, and if any Man (being required) shall refuse to aid the Sheriff therein, they shall be fined to the King: Br. fines 37.

3 E. 1. c. 9.

And by the Stat. of 3 Ed. 1. c. 9. upon any felony committed all men generally shall be ready at the commandment of the Sheriff (and at the cry of the County) to pursue and arrest all felons (when any need is) as well within franchises, as without; and they which make default and thereof be attainted, shall make a grievous fine to the

King: and it seemeth the Sheriff may attach all such persons making such default, to appear before the Justices of Gaol-delivery, there to answer their said default: Officium Coronat<sup>r</sup> 3 Ed. 1.

And yet a Man cannot justifie to Arrest another for Felony, by the commandment of the Sheriff, for in such case every Man hath equal power with the Sheriff, and so his commandment is not material: And it is not like where the Sheriff hath the King's Writ or Process to execute, for there upon the Sheriff's Precept in writing, (and in some cases, upon his command by word only) a Man may justifie, &c. H. 7. 4. 5.

Also the Sheriff may and ought to Arrest (or Attach) and take into his custody, such Felons so apprehended or taken, and ought to imprison them in the Gaol till the coming of the Judges, or Justices of Gaol-delivery, 3 E. 1. c. 9. & 4 E. 1. Officium Coronat<sup>r</sup>.

If a Felon taken upon Hue and Cry, shall be delivered to the Sheriff, he is to Inrol the same: And upon a presentment thereof before the Justices, if it shall be found that the Felon is out of the custody of the Sheriff, contrary to Law, it shall be adjudged an Escape in the Sheriff, 3 E. 3. Fitz. Coro. 345. See hic c. 2.

But if the Sheriff (of his own Authority) shall Arrest any Man upon suspicion of Felony, first there must be some Felony committed in deed, and next the Sheriff himself must have a suspicion of him, and for the same Felony. Liber Intrac. tit. faux impris. div. 5. & 5 Hen. 7. fol. 4. for the Sheriff's Authority therein, is but such as every Man hath, ut supra.

See more in my Country Justice, tit. Forcible Entry & tit. Arrest.

*Suspected persons.*

Also Sheriffs (ex Officio) may Arrest within their County all persons by them suspected which be Vagrant, or which shall walk by Night or Day, and which are of evil Name or Fame; and they shall commit such Offenders to the Gaol, there to remain until the coming down of the Justices assigned to deliver the Gaol: 5 E. 3. cap. 14. Cromp. 203.

Quare, If the Sheriff may not put such suspected persons under common mainprize, binding them with two sufficient sureties by Recognizance to appear before the Justices at their next Sessions or Gaol-delivery, and to certify the same Recognizance before the said Justices accordingly; every Sheriff in Wales may do this by the Statute 34 H. 8. c. 26, & 27 H. 8. c. 26.

Also if any other person shall have any suspicion of such Night-walkers, or other persons of evil Fame, they may Arrest them, or cause the Constable to Arrest them, who shall deliver them to the Sheriff, and the Sheriff ought to receive them, and shall enquire of such offenders, and shall return their Enquests before the said Justices of Gaol-delivery, with that which they have found, and the cause of their said Arrests, together with their Bodies: And in case that the said Sheriff hath not enquired of such Arrests, they shall be amerced: See hic antea cap. 2. E. 3. c. 14.

Also

2 E. 3. c. 3.  
Northampton, Glom.  
203. Also every Sheriff (within his County) may and ought to Arrest *Persons in Ar-*  
rest all such persons as go or ride armed offensively, either in the *rest*.  
presence of the Sheriff, or in fairs or Markets, or elsewhere, in  
affray of the King's people, and may commit them to Prison, there  
to remain at the King's pleasure (i.e. until the King's Majesty hath  
signified his pleasure of them: Or that the King's Justices, before  
whom such Offenders shall be convicted, shall deliver them: ) and al-  
so the Sheriff may seize and take away their armour to the  
King's use, and prize the same by the Oaths of some present.  
See my Country Justice, tit. Armour & Bailment.

And yet they themselves (i.e. the Sheriff and his Officers) may  
lawfully bear armour and weapons: See hic posse comitatus.

The Sheriffs in Wales may put every misruled and suspected  
person within their Sheriffwick, under common Mainprize and  
Surety of their personal appearance, and that by Recognizance  
with two sufficient Sureties, to appear before the Justices within  
the limits of their Authority, at the next General Sessions to be  
holden next after the taking of such Bonds, and shall certify the  
names of them that be bound before the Justices at the said Ses-  
sions, without concealment thereof. See the Stat. of 27 H. 8. c. 26.  
& 34 H. 8. c. 26.

12 R. 2. c.  
6. Sheriffs may and ought to take from Servants (to Husbandry, *Weapons from*  
and from Servants to any Artificer or Vintaller) as also from *Servants.*  
Labourers, their Swords, Daggers and other Weapons, if they  
shall find them bearing any: except it be in time of War for the  
defence of the Realm, or when they be travelling with their Master,  
or on their Masters Message: And the Sheriff may and ought to  
Arrest such Offenders, and if he can he may commit them to  
Prison, there to remain until the next Sitting or Sessions of the  
Peace, or Gaol-delivery: See before the Stat. 2 E. 3. cap. 3.

Also the Sheriff shall keep their said Weapons until the next sit-  
ting or Sessions of the Justices, and shall then and there present  
the said Weapons, together with the names of those persons  
which did so bear the same Weapons. But this Statute of 12 R. 2.  
c. 6. seems to be wholly now repealed by 21 Jac. cap. 28.

23 H. 6. c.  
14. If any Noble Mans, or other Subjects Catoz shall (by way of *Purveyor de*  
purveyance) take any Mans Goods, or any Carriage, against the *Subject.*  
Owner's will, upon notice thereof, and request made to the Sheriff  
(or other Officer) they shall presently Arrest all such Catozs and  
Bupers so offending, and shall send them to the King's next Pri-  
son, there to remain without Bail, until they have redelivered the  
said Goods, Carriages, and things so taken, or the very value of  
the same: And if the said Sheriff (or other Officer) shall do the  
contrary (i.e. shall not assist the party oppressed in such case) they  
shall forfeit twenty pounds, the one half to the King, and the other  
half to the party from whom such things be so taken (if he will sue  
for the same; and if he will not sue, any other may sue for the  
King and himself, &c.) And besides if any such Catozs or Bupers be  
duely convicted of such unlawful taking, they shall yield to the party  
grieved, the treble value of the things so taken, and double Costs  
of Suit, and withal shall make fine and ransom to the King.

By

*Rioters.*

By the Statute made 17 R. 2. c. 8. Sheriffs (and all other the King's Officers) when they have notice of any unlawful Assembly <sup>17 R. 2. cap. 8.</sup> or Riot, or other offence against the Peace, they ought to raise the power of the County (if need be) and with all their power to apprehend such Malefactors, and to commit them to prison, there to remain until due execution of the Law be done upon them: And all Lords (of Seignories) and all other the King's Liege people, ought to be attendant to the Sheriff, and other Officers with all their power and force herein.

*Arrest.*

And by a later Statute made 13 Hen. 4. If any Riot or unlawful Assembly shall be made in any part of the Realm, the Justices of Peace (or two of them at the least) and the Sheriff, or Under-Sheriff (of the County where such Riot or Assembly shall be made) shall come with the power of the County (if need be) and shall Arrest all such Offenders, as they shall find there present (and all such as come in the Company with such Rioters,) And shall take away their Weapons and Armour, and shall cause the same to be prized, and to be answered to the King as forfeited. See the Stat. of Northampton, made Anno 2 E. 3. cap. 3. <sup>13 H. 4. 7. 2 E. 3. c. 3.</sup>

And in the execution of this Arrest of Rioters, the Sheriff, &c. may justify the beating, wounding, or killing of any of the Rioters, if they shall resist, or will not yield themselves.

*Record.*

After the Arrest made of such Rioters, the said Justices and Sheriff or Under-Sheriff shall make a Record in writing of the said Riot, &c. of all that which they shall find or see done in their presence against the said Law (without any enquiry thereof by a Jury) and such a Record shall be a sufficient conviction of the Offenders. <sup>13 H. 4. c. 7.</sup>

*Imprison.*

After such Record made of the Riot, the said Justices and Sheriff or Under-Sheriff shall presently commit the Offenders to Prison: And also may Assess their Fines (or else they may leave that to the Assizes or Sessions, &c.) And the power of the County ought to be aiding to the Sheriff or Under-Sheriff for the conveying of the Offenders to the Gaol. <sup>Crom. 61. b.</sup>

And if this Statute of 13 Hen. 4. be not executed fully in all and every part thereof by the Justices of Peace, and by the Sheriff or Under-Sheriff, &c. If they shall not Arrest all such Offenders as they shall find there present: Or if they shall not make a Record in writing of all that which they shall see done in their presence against the Law; Or if they shall not commit the Offenders to the Gaol (presently:) Then as well the two next Justices of Peace, as also the Sheriffs or Under-Sheriffs shall forfeit each of them one hundred pounds, Cromp. 61. b.

*Inquiry.*

If the Rioters be gone before the coming of the Justices and Sheriff, then the same Justices, or two of them, ought diligently to enquire thereof (by a Jury to be returned by the Sheriff) within one month after such Riot or unlawful Assembly made; and if the truth cannot be found out, then within one month next ensuing after the enquiry, the same Justices (or two of them) and the Sheriff or Under-Sheriff shall certify the King and his Council thereof; which Certificate <sup>13 H. 4. 7.</sup>

Lamb. 319. tificate shall be made into the Star-Chamber, or to the Body and  
Crompt. 63. Board of the Privy-Council, or into the King's Bench of the whole *Certificate.*  
fact, and all the Circumstances thereof, with the certainty of the  
names of the principal Offenders, which Certificate shall be of the  
force of an Indictment of twelve men against the Offenders: See  
13 H. 4. cap. 7.

13 H. 4. c. 7 And for default of the Justices of Peace, and Sheriff or Under-  
Dyer 210. Sheriff, in not making such Certificate, as well the two next Ju-  
stices of Peace, as also the Sheriff or Under-Sheriff shall forfeit  
each of them One hundred pounds to the King.

19 H. 7. c. And if the said Riot or unlawful Assembly be not found by rea-  
13. son of any imbracery or maintenances of the Jury, then the said  
Justices of Peace, and the Sheriff or Under-Sheriff over and be-  
sides such Certificate which they must make, according to the afore-  
said Statute of 13 H. 4.) shall in the same Certificate also certifye  
the names of such maintainors and imbracers, with their misde-  
meanors that they know, upon pain of every of the said Justices  
and Sheriff, or Under-Sheriff to forfeit twenty pounds, if they  
have not reasonable excuse for their not certifying of the same.

Lamb. 320. If after the enquiry, and before the Certificate made, the She-  
riff happen to die, or one of the Justices be put out of the Com-  
mission, then no Certificate can be made by the Opinion of Master  
Marrow.

But Quære thereof in regard of the Penalties inflicted by  
the Statute aforesaid. See more in my Country Justice, titulo  
Riots.

3 E. 1. c. 32 Do Sheriff shall suffer any Barrettors or Maintainers of Quar- *Barrettors.*  
Poulton.rels in their Shires: This Statute seemeth to be here falsly tran-  
slated, sc. the last word (Shires) for County Courts; for the old  
French Statute Book, is in these words, *Purveu est que nul Vis-  
counte ne soeffre Barrettor maintenir parols en Countes*: And the title  
over the Statute is thus, *Queux devient fere les Judgments en Countes  
ou Court de Baron*: And therefore this Statute seemeth to be only a  
prohibition to the Sheriff not to suffer any Barrettors to main-  
tain any Actions, Suits or Quarrels in their County Courts: sc.  
Co. 8. 36. that Sheriffs in their County Courts shall not suffer any person  
by fraud or malice to maintain multiplicity of unjust and feigned  
Suits there, nor to stir up others thereunto. See hic postea titulo  
County Courts.

13 E. 1. c. If the Sheriffs Bayliff shall return a disturbance of the execution *Disturbers of*  
39. of the King's Process, the Sheriff shall forthwith go in person (tak- *the Sheriff.*  
ing with him the power of the Shire) to do execution; and if he  
finds his Bayliffs false he shall imprison them; and if he finds them  
true, he shall punish the resisters by imprisonment, from whence  
they shall not be delivered without the King's special Commandment  
And if the Sheriff do find such resistance when he cometh (but can-  
not attach them) he shall certifye to the Court the names of the  
resisters, their Aiders, Consenters, Commanders, and Favourers,  
and they shall be Attached by a Writ out of the Court to appear  
there, &c. But the Sheriff shall not punish (otherwise than by  
Imprisonment) such Resisters, as he findeth himself: For the Of-  
fenders

Vide Dyer,  
212 & hic,  
cap. 42.

enders may Traverſe the Sheriff's Certificate oꝝ Return: And beſides, the words of the Statute are further thus, Neither ſhall any Officer of the King's meddle in Assigning the puniſhment, foꝝ our Lord the King hath ſpecially reſerved it to himſelf, becauſe that Reſiſters been reputed diſturbers of his Peace, and of this Realm. But yet the Sheriff may Arreſt and Impriſon ſuch Offenders oꝝ Reſiſters (as he ſhall find himſelf) as breakers of the King's Peace, and ſo to have their Bodies ſoꝝth coming and ready to appear in the King's Court at the coming of the Juſtices; Again, the words of the Statute are further, that if the Sheriff ſhall return (into the Court) that he could not execute the King's Proceſs foꝝ reſiſtance, he ſhall be amerced, foꝝ he ſhould have taken the power of the County to have aided him therein, and that ſuch returns of the Sheriff rebound much to the diſhonour of the King.

Amerced.  
Poſſe Comitatus.  
111.

Rolls 2.  
part 57, 58

Mr. Bracton, lib. 3. cap. 37. ſaith, Officium vic. eſt, ſi quis Conqueratur de inſta Captione averiorum, &c. (ſoit ceo per brief ou Plaint) accedat vic. ad locum, &c. Et petat viſum de averiis, &c. Et ſi ſit aliquis qui velit contradicere, vel propter hoc in eum manus violentas injece-rit, Capiat delinquentes, & in Gaolam projiciat, quouſq; Dom. Rex inde præceperit voluntatem ſuam, &c.

And note, whereſoever the Sheriff (oꝝ any other of the King's Officers) may take Poſſe Comitatus, oꝝ have authoritp either to execute the King's Proceſs, oꝝ to apprehend felons, Riotoꝝ, oꝝ other breakers of the King's Peace, if the Sheriff, oꝝ other Officers ſhall find reſiſtance therein, it ſemeth thep may arreſt and impriſon all ſuch reſiſters, and other ſuch offenders, which thep ſhall find there preſent: See my Country Juſtice, titulo Arreſt and Impriſonment.

And whereſoever the Sheriff ſhall take Poſſe Comitatus with him, although it be without ſufficient Cauſe, yet his ſervant, oꝝ any other perſon, may juſtifie the ſame by the Sheriff's Commandment, foꝝ that ſuch their doing was by Authoritp, 5 Hen: 7. 4, 5.

Alſo whereſoever the party againſt whom any lawful Proceſs, Writ oꝝ Warrant is granted, ſhall after he is arreſted, oꝝ other execution of ſuch Warrant done, make reſiſtance, oꝝ ſhall make an aſſault upon the Officer, there the Officer may juſtifie the beating and hurting of him, and of all other that ſhall diſturb the Officer in the execution of ſuch Proceſs, Writ oꝝ Warrant; and may alſo impriſon him and them (in the Stocks) foꝝ the ſame as it ſemeth. See Br. Treſpals 218. & 296. Foꝝ the beating of ſuch as reſiſt, oꝝ aſſault the Officer.

And if the Sheriff, oꝝ his Bapliſſ, oꝝ other Officer cometh by virtue of the King's Proceſs, oꝝ other lawful Warrant to arreſt another foꝝ Debt oꝝ Treſpals, &c. who maketh reſiſtance, and thereupon is ſlain by ſuch Officer, oꝝ by any of his Company, this hath ben taken to be no Felony, but juſtifiable. See Fitz. Coron. 261. Doctor and Student 133. b. Cromp. 24. a. 30. b. Tamen quære what the Law is at this day, in this laſt Caſe.

Sheriffs also may Bail their Prisoners in divers cases. See *Bail Prisoners*.  
hic postea tit. Bailment.

13 R. 2.  
c. 8.

Sheriffs have the keeping and the cognizance and correction of the *Assize of Bread* *&c.* *Assizes of Bread and Ale*, and also of false weights and measures, (which things do appertain to the Crown, *Bract lib. 3. c. 35.*) And they may in their Turn enquire of the Assize thereof broken, &c. But if they upon enquiry shall find any to be defective, they shall take no amercement or fine for any default touching the Assize (of Bread and Ale) for the which such an Offender ought to have Bodily punishment by the Law; but (by the Statute made Anno 13 R. 2. c. 8.) they shall adjudge them to that bodily punishment which the offence requireth, and shall do due execution thereof. Vide hic cap. 109.

Stat. 51 H.  
3.

And by the old Statutes and Customs used in this behalf, the Baker and Brewer for their first offence in breaking their Assize, shall be amerced; for the second offence likewise amerced, (according to the offence;) for the third offence they shall be more grievously amerced and warned; but if they shall offend in breaking of the Assize the fourth time (being thereof convicted by order of Law,) then they shall receive corporal punishment upon the Pillory, or some other bodily correction, without any redemption either by Gold or Silver: And if the Baker doth exceed (in breaking the Assize of his Bread) the full weight of two shillings six pence (which is one ounce and an half) in his farthing white loaf, then he shall suffer the judgment and punishment of the Pillory without any fine or admonition given to him; vide the Statute of the Pillory and Tumbrel made Anno 15 Hen. 3. and another Statute incerti temporis cap. 2. & 6. Poulton Statutes at large, page 17, 111, & 112.

Sheriffs also in their Turn, sometimes upon their own view of the offence, and sometimes upon presentment thereof, may commit the Offenders to Ward or Prison (in some cases) and in other cases may impose a fine upon them, or may amerce them, &c. See more hereof hic postea tit. Torn.

1 E. 4. c. 2.

But now by the Statute made Ann 1 Ed. 4. c. 2. the Sheriff (of himself, without Process or Exceats, to him delivered from the Justices of Peace) hath no power to levy any Amerciaments upon any Presentment or Inditement, taken before him in his Turn, but all such Presentments and Inditements, are first to be delivered by the Sheriff to the Justices of Peace of the same County, and the Offenders to be proceeded against by the said Justices, and then the Justices are to make out Process for the Attaching of such Offenders, and for the levying of such amerciaments, &c. and to deliver Exceats to the Sheriff to levy the same thereby. See hic postea titulo Sheriffs Torn.

And now upon Presentment in the Sheriff's Turn, of any Inholder or Hostler, for not making their Hozle-bread of due Assize, the Sheriff may fine the Offenders, and may make out Process against them; and they being taken the Sheriff may commit them to Prison until they have paid the fine, 32 H. 8. c. 41. & 21 Jac. c. 21.

Note also, That in some cases the Sheriff hath two powers, or a double and two-fold Authority, i.e. the one as a Judge, and the other as an Officer, in one and the same business; As in a Writ of Redisseisin, in a Writ to enquire of Waste, in a Nativio habendo, and in a Writ of Admeasurement of Pasture, &c. In these cases the Writ is as a Commission to the Sheriff, and by vertue thereof the Sheriff is Judge of the cause (as the Justices of Nisi Prius are) Fitz. Attaint. 13. 2 H. 4. 3.

And therefore in a Writ of Redisseisin, the Sheriff as a Judge, taketh and holdeth Plea of the matter, and goeth to the Tencements to see them, and to hear the matter, and after he giveth judgment, and committeth the Disseisor to Prison: And as an Officer he executeth the Process, &c. 7 H. 7. fol. 4.

So upon a Writ of Admeasurement of Pasture (which is Discountrel) the Sheriff, as a Judge holdeth Plea, granteth or maketh out Process, and examineth the matter: Otherwise the Suitors be Judges, Co. 6. 12.

To enquire of  
Waste.

And in a Writ to enquire of Waste, as also in a Writ of Redisseisin, &c. the Sheriff being both a Judge and an Officer of Record, if therefore he shall make a false Return therein, the party cannot contradict it; and if the Land lie in a Franchise, the Sheriff cannot make his Warrant to the Bayliff of the Franchise, or Return Mandavi Ballivo, &c. for he cannot grant over the Judicial power, but he must enter the Liberty, and execute the Writ himself, otherwise it is Error. 11 H. 4. 7. H. 4. fol. 4. Br. Offic. 4. 9. 34. 37. 42. & Rediff. 6.

Redisseisin.

And upon a Writ of Redisseisin directed to the Sheriff, if the Sheriff by Inquisition thereof taken before him, shall find the Disseisor to be disseised again, &c. then the Sheriff shall presently take such Disseisors, and commit them to Prison, there to remain at the King's pleasure, &c. and not to be delivered without special Commandment: For in case of Redisseisin, the Sheriff is made and appointed to be a Judge (by this Statute of Merton) and all his proceedings by force of the said Statute of Record, &c. Co. 6. fol. 12. 20 H. 3. c. 3.

Nativio habendo.

Also in a Writ de Nativio habendo, if it goeth to the Sheriff to hold Plea of the Matter, there he is both a Judge and Officer, &c. But where it is directed to the Sheriff Returnable in Banco, there is he but an Officer, and not Judge. Vide hic postea tit. County Court. Fitz. 78. k. & Fitz. Retor. 52. Br. Offic. 36.

Note, That in a Writ to enquire of Waste, as also in a Writ of Redisseisin, &c. directed to the Sheriff, whereby he is made a Judge of the cause, the Sheriff must sit and execute the same in proper person, and not by his Under-Sheriff or other Deputy, neither ought he to write, &c. to the Bayliff of a Franchise, although it be within a Franchise, but the Sheriff must enter the Franchise, and must do it himself. And the Process in such cases shall be served by the Sheriff's Bayliff. Fitz. Return 52. 53. 92. So likewise in a Writ of Dower, Noy 21.

Also in Case of Replevin, the Sheriff by the Stat. (of Marl. cap. 21. & West. 2. c. 2.) hath been holden to be a Judge of the Cause, and the Statutes to be to him a Commission, as a Justices, &c.

21 H. 6. Fitz. Rector. 17. *See* more hereof hic postea tit. County Court.

*Nota* in every Case where a Justices was directed to the Sheriff, he was holden to be a Judge of the Cause, and not the Suitors, *ibid.* But the Law is now holden otherwise. *See* Co. 6. 11, 12.

Mr. Bracton, lib. 3. c. 35. wrote thus, *Potest quidem Vicecomes tenere plura placita, quæ non sunt ex Officio Vicecom. sed vice ipsius Regis, Non sicut Vicecomes, sed sicut Justiciarius Regis: Si hoc ei specialiter demandetur quod Juratam Capiat, & Inquisitiones faciat, Extensiones, & Partitiones, licet in quibusdam Judicium reddere non possit: Item habet ex speciali mandato Regis, non ex Officio Vicecomitis, ubi mandatum habet quod Justitiet aliquem, & quo Casu videtur quod omnia habere debeat ut Justiciarius, sine quibus placitum illud terminari non possit. Habet etiam ut Justiciarius, & non ex Officio Vicecomitis, quod cognoscere potest de Averiiis captis & detentis, contra vadium & plegium, quod quidem placitum pertinet ad Coronam, & quod ei ex Necessitate conceditur ad terminandum, &c. Item pertinet ad ipsum cognoscere de Assisis in Regno statutis, & juratis per Regnum, si fuerint servata, vel non, sicut Panis & Cervisie, & de falsis mensuris, quæ pertinent ad Coronam, & de quibus Attachiamenta facere potest simul cum Coronatore, usque ad adventum Justiciariorum: Item pertinent ad Vicecomitem visis Franciplegiis in Turnis suis duobus singulis Annis per Hundreda, Wapentakia faciendis, &c.*

Also in choosing Knights for the Parliament, the Sheriff by the Statute (to some purposes) is made a Judge, *sc.* to examine, and to judge of the ability of such as be choosers of those Knights. *See* tit. Knights of Parliament.

Thus much concerning the Sheriff's absolute authority, and now it followeth to Treat of his Ministerial Duty, &c.

And note, That both these his Authorities (or Duties) seem to be implied in the Saxon word *Schire Reeve*, id est, *le Reeve del Shire*, which is as much as *Præpositus Comitatus*, the Ruler or Governor of the County (*See* Co. 9. 49. & Co. Lit. 168.) importing his absolute power, Or *Ballivus*, or *Thesaurarius Comitatus*, the King's Baplist, or Treasurer of the County or Shire, importing his Ministerial Duty, it being part of his Duty to gather up the common Monies and Profits, &c. of the King within his County. And so the Sheriff is called *Ballivus*, and the County is called *Balliva sua*, Co. Lit. 61. b. 168.

Besides that the County is many times called *Balliva*, a *Baplistwick*, as appeareth also by the forms of the Sheriff's Returns, *Non est inventus in Balliva mea*, &c.

This Ministerial Duty of the Sheriff, Mr. Camden, p. 160. setteth down thus. The Sheriff may well be termed the Treasurer of the Shire or Province: For it is his Duty to gather the common Monies and Profits of the Prince in his County; to collect and bring into the Exchequer all fines imposed, even by distraining; to be attendant upon the Judges, and to execute their Commandments; to assemble and impanel the twelve men, which in causes do enquire of the fact, &c. to see condemned Persons executed; and to examine

and determine certain smaller Actions. Hæc ille. And therewith for the most part, agreeth that which followeth here.

The word Reeve is a Saxon word, and signifieth as much as a Bayliff: And as a Bayliff of a Manor is one which hath Authority to gather up Rents, Amerciaments and other Duties, &c. due to his Land, and to do other business belonging to a Manor, so the Sheriff hath Authority to do for the King in his County as aforesaid, sc. to gather up, and accept for, the common Monies, and Profits of the County which come to the Exchequer, and to do and execute other common businesses.

The word Bayliff came in with the Normans, and here it signifieth an Officer concerning the administration of Justice of a certain Province. See the Terms of the Law, and Co. Lit. 168.

#### C A P. V.

The Ministerial Authority, Duty, or Office of the Sheriff, consisteth principally in these things following.

**T**o keep the King's Rights of his Crown, within his County: sc. the King's Lands, Franchises, Suits, Rents, and all other things that belong to the Crown: See his Oath; & hic cap. 19. 6, 7, 8.

2. To keep (and bring into the Exchequer) the Profits and Monies due to the King within his County or Bayliwick: sc. the King's Rents, Farms, Debts, Issues, Amerciaments, Fines and Forfeitures, hic cap. 9. 10, &c.

3. To seize to the King's use the goods of Felons attainted, and of Fugitives, and of Persons Outlawed, Treasure trove, Wapfed Goods, &c. Deodands, Estrays, Wreck of the Sea, Whales, Elephants, Wards, and Lands of Ideots, hic cap. 14, &c.

4. To keep and put in execution all manner of Writs, Process, Judgments, Executions, Commandments, and Precepts directed to him from any of the King's Courts, which are to be executed within his County, cap. 20. To return all such Writs, &c. cap. 36. To Impanel Juries, and to Return them, cap. 85, &c.

5. To be attendant upon the Judges in their Circuits, &c. And to execute all their lawful Commandments, hic cap. 98.

6. To assist the Justices of Peace in his County: sc.

in some Cases	{	To join with them,	} See hic cap. 99.
		To attend them,	
		To execute their Precepts, &c. ibid.	

7. To execute the Precepts of Commissioners of Sewers, and other Commissioners, cap. 100.

8. To

8. To execute the Precepts of Escheatoꝝ and Coroners, *ibid.*

9. To assist the Ordinary, in suppressing Heresies, cap. 101.

10. Trulp to keep his Courts : *sc.*

his { Turn; in this the Sheriff is a Judge of Record, and so hath a Judicial Power.  
County or Shire Court; which in some Cases also is a Court of Record. *See hic cap. 105, &c.*

11. To proclaim certain Statutes, &c. cap. 102.

12. To make Purveyances for the King in some Cases, cap. 103.

Of all these *see* more fully hereafter in this Book.

## C A P. VI.

## Lands.

**I**t is parcel of the Sheriff's Oath, trulp to keep the King's Rights of his Crown, *sc.* his Lands, &c. Now the King's Lands, be either the ancient *Demesne* Lands belonging to the Crown: Or else such Lands wherein the King hath Right, as descended to him from his Ancestoꝝ, or of his own Seisin, Purchase or getting, or which come to him by Escheat or Forfeiture. *Lands.*

*Fitz. 16. d.  
Vid. Minsh.  
verbo  
Domesday  
Book.*

*Mr. Fitz. saith, That the Book which is called Domesday (being the surbey of England) was made in the time of St. Edward the Confessor, and all the Manoꝝ and Lands which were in the Seisin and Hands of the said St. Edward, at the time of the making of the said Book, are ancient Demesne, and were anciently belonging to the Crown.*

*Ancient Demesne, Antiquum Dominicum continet omnes illa terras quæ ad Regem spectabant tempore Edwardi Confessoris. Vide Dr. Cowell 88.*

*And yet vide 49 E. 3. 22. Br. Aunc. Demesne 9. (and Mr. Lambard and Mr. Cambden) that the Book called Domesday was made in the time of King William the Conqueror, and that the Lands in that Book, which are under the title, Terræ Regis Edw. or under the title, Terræ Regis, only (which is intended William the Conqueror) are ancient Demesne; And so that the Lands which were in the hands of the Conqueror, are also ancient Demesne; And that by that Book on'y (or chiefly) shall ancient Demesne Lands be tried.*

*For the reason of the name of the Book, John Speed in his Chronicle, pag. 5. says thus: King William the Conqueror caused a description to be made of all Engl. how much Land every one of his Barons possessed, how many Knights *see*, how many Plow-lands, how many*

many in Dillenage, how many Head of Beasts, yea how much ready Money every Man did possess, and what Rents might be made of every Mans possessions: The Book of which Inquisition (yet in the Exchequer) was called Domesday, for the generalitie of that Judgment on all the Land.

And so it may seem that Edw. the Confessor caused such a Book to be made (in his time) of all such Manors and Lands which were then in his own Hands; And that William the Conqueror made an Addition to the former Book, and caused to be entered therein, and added, such Lands as were then in the Hands of the Conqueror himself; as also such Lands as were in the Hands of every of his Barons, and other Subjects.

Now it is to be considered what the Sheriff's Office or Duty is in this particular; or what the Sheriff by vertue of his Oath stands bound to do, if he knoweth of any of the King's Lands within his Bayliwick, to be concealed or withholden, by any Subject having nothing to shew for them.

And yet where any man shall encroach upon the King's Lands, or upon the King's High-way, or shall levy or make any Houle or Building, Wall or Hedge, &c. upon the King's Land, &c. or shall make any Enclosure thereof, these are Purpessures, and to be enquired of, and reformed by the Sheriff in his Term, and may be seized into the King's Hands by the Sheriff, &c. See hic cap. 107. See postea.

Where any Lands, &c. shall come to the King by Descent, Reversion, Remainder or Elcheat (in which cases, without any Office found, or other matter of Record, there is a Possession in Law vested in the King, sc. the freehold is cast upon him in Law) there it seemeth that the Sheriff ex Officio, may seize or take the profits of the same Lands to the King's use (making account for the same) and so may the Elcheator. *Stamf. de Prerog. fol. 54. Co. 4. 58. Vide plus Stamf. & Co. 5. 52.* Rolls 7. part. 183.

In ancient times the Sheriffs in their Turns did enquire of Alienations in mortmain; and of Alienations (by the King's Tenants) without Licence. *Lectura Mr. Littleton super Stat. Westm. 2.* And in such cases the Sheriff might have seized the Lands to the King's use, as Lands forfeited or elcheated.

But the Elcheator is now a more special Officer for finding out the King's title to Lands, and other things, *4 Ed. 4. 24. Fitz. 227. Co. l. 13.*

## C A P. VII.

## Franchises.

**A** Franchise is a Royal privilege in the hands of a Subject, Finch. 38. And such are every liberty, or commodity, which having their creation at the first, by the special grant of the King, or of their own natures appertaining to the King, are given or granted to a common person, to have thereof some estate of inheritance, or for life, &c. And of these some are more Royal than others; of all which see more fully in Dr. Finch. 38.

But of such as are less Royal (being almost infinite) some few of them, whereof our Law Books do most make mention, and wherewith the Sheriff hath any thing to do, are here shortly treated of: And if any man do hold any of these last franchises without or contrary to the King's grant or lawful prescription, it seemeth to be enquirable in the Sheriff's Court, as a Purpresture, or as an usurpation upon the King. Co. Lit. 277. Vide Fitz. forfeiture 26.

For it is parcel of the Sheriff's Oath to keep the King's Franchises; and therefore the Sheriff may enquire of, and seise for, and to the King's use divers of those things, as franchises and Royalties belonging to the King by his Prerogative. Franchises.

The mean profits of Lands for  
Intrusion, and Alienation  
without Licence.

The profits of the Lands, &c.  
of Aliens.

Within their Bap-  
litwick or Countp.

The profits of such Attain-  
lands as come to der, or  
the King by Escheat.

He is to seise  
to the King's  
use

But in most Cases, for the profits of Lands there must be first an Office found for the King (which properly belongeth to the Escheator) i. e. to enquire and find the certaintie what Lands they be, and the yearly value thereof, &c. before the Officer may seise them, Vide Co. 8. 169, & 9. 95.

The profits of the Lands of persons outlawed in personal Actions, these the Sheriff may seise without any Office, &c. 21 H. 7. 7. 2.

And

And so it is concerning the goods of	Felons attainted, Fit. Coro. 285, 308, 368.
	Fugitives, Fit. Coro. 287. Stamf. 192, 193.
	Outlaws.
	Egyptians.
Waived goods, and goods confiscate, &c.	

But by some opinions the Escheato<sup>r</sup> is always accountable for the goods of Felons and Fugitives and the like; and not the Sheriff, save in a gross sum for the form of the profits of the Count<sup>y</sup>, Keil. 173. Yet see the Sheriff's Oath, hic cap. 124.

Note, That to lands and hereditaments, the King is intitled only or chiefly, by matter of Record. But for personal and transitory things, as Caralla Felonum, & Fugitivorum, Wreck of the Sea, Treasure trove, and the profits of the lands of persons outlawed in personal Actions, and of Clerks convicted of Felony, the King shall be intitled thereto without any Office, or other matter of Record, 21 H. 7. 7. a. Perk 5, 6. Stamf. de Prerog. 56. Co. 2. 52. 17. 12, & 11. 77.

And therefore for seizing of Lands, the Sheriff must be well advised that he hath the King's Writ, or other lawful Warrant or Commandment from the King's Courts or Justices, or other lawful Authority so to do, lest otherwise he prove a disseiser: See 3 E. 1. cap. 24. 17 E. 2. F. Ass. 373. 2. Ass. pl. 9. & Co. 8. 169. 170. Br. Prerog. 91. & hic postea cap. 122. a difference taken where the Sheriff shall do a thing *virtute brevis*, that is a warrant to him; otherwise where he doth it *virtute Officij*.

But where the King is not to have seisin of the Land it self, but is only intitled to the profits of the Lands (as of the Lands of him that is outlawed in a personal Action, or of a Clerk convicted and the like) there the Officer may make seizure of the profits of such Lands without an Office, &c.

And so in all cases where a possession in law of a Freehold is cast upon the King, the King by his Officer may enter upon or seize the Land it self; and take the profits thereof without any Office found, &c.

But the Escheato<sup>r</sup> is a more special Officer for finding out the King's title to Lands or Tenements as is before shewed. And where the Office is found before him, he is chargeable: But where the Office is found before Commissioners, there the Sheriff shall be charged, Crompt. 173.

Also for Goods and Chattels, &c. the Sheriff may seize them, for they do vest in the King without any Office or Inquisition to be found thereof, 24 E. 3. Br. Prerog. 30. & 38. 21 H. 7. 7.

And

And it was adjudged Hill. 27 Eliz. that the Goods of one that is Outlawed are in the King from the time of the judgment pronounced, although that no seizure be made of them.

2. Where any Franchise shall be seized into the King's hands, the King shall be answered the profits thereof, and the Sheriff is to seize such profits to the King's use: (Br. quo Warr' 5. 7.) But such seizure must be after judgment given in a quo Warr' ibid.

as } The Liberties of a City, or Town-Corporate, that have conu-  
lance of Pleas, or other Franchise.  
The office of the Warden of the Fleet, or of other Gaoler's fee.  
The Liberties of Lords of Manors, which have Hundreds, or  
Lets, Fairs or Markets, Waifs, Estrays, Weck, Warren,  
Park, Catalla felonum, fugitivorum. & utlagator. Tolle, and the  
like, Assize of Bread and Bar, Pillory, Tumbrel, &c.

Note, That such as have the keeping and correction of the Assize of Bread and Bar, if they have not a Pillory and Tumbrel to punish Bakers and Brewers that are faulty, they forfeit their Franchise, Keil. 148.

Also the Lord of a Tret shall forfeit his Tret, if his Steward shall take any Money, or other reward, to spare the punishment of the Tumbrel, where one hath offended in the Assize of Bread or Bar. Cromp. 181.

By non User of a Franchise within time of Memory, the Franchise is forfeited, Ibid. & 14 H. 7. 1.

A Fair or Market may be forfeited and seized for non User thereof; or for misuser thereof. As where a man hath a Fair or Market to hold upon one day, and he holdeth it upon another day; or holdeth it two days together in one week, 2 H. 7. 11. 15 E. 4. 7. 22. Ass. pl. 34. Finch.

But Fairs to be holden upon principal Feast-days or Sundays, they may be holden within three days before or after, upon Proclamation thereof first made, without fine or fee to the King. 27 H. 6. c. 5.

And note, That a sale made upon a Sunday, though in a Fair or Market overt, doth not alter the property of the Goods, 12 E. 4. 1. Brian.

If the Lord of a Fair or Market shall take excessive Toll, the King may seize the Fair or Market, 3 E. 1. c. 30.

*Nota que le vendor ne paiera tolle mes l'achator, 28 Ass. Finch. 39.*

*Tolle est destre ewe de chescun que achate ascun chose (in Fair ou Market) pur vender arere, mes cestuy que achata ascun chose la, pur son expence demesne, ne payer tolle pur ceo, 9 H. 6. 45. Finch. 166.*

*Tolle ne serra pay pur choses port al Faire, mes pur choses que sont vend la : Et unc' per Custome auterment est, Finch. 39.*

*Ne besoigne d' aver Confirmation de Franchises de chescun Roy, Coment que est issint use, 1 R. 3. fol. 4.*

*Franchise vient al Roy per Escheate, ou aliter, unc' n'est extinct, Keil. 72. tamen vide Co. 9. 25. que ascun sont extinct, & ascun nemy.*

3. The King shall have by his Prerogative all such things whereof the owner or propriety is not known, and that according to the old rule. Quod non capit Christus, capit fiscus.

*Tithes of a ground which is within no Parish (as in great forests, &c.) the King ought to have such Tithes, 22 Aff. p. 75. Fitz. Jurid. 31. Br. Prerog. 143. And it sameth that there be some special places in every Countrey, which be out of any Town or Hamlet, Finch. 80.*

*Estrays, waived Goods, Wreck, Treasure trove, &c.*

as *Whales, Sturgeons, &c.*

*Swans that be wild, unmarked, and abroad at their liberty, the Sheriff may seize them, &c. Co. 7. 16.*

*And by Gascoine, 8 H. 4. all such Goods in England in which no man hath property, shall be adjudged to the King by his Prerogative, and the same law is of land, and the like, Br. Prerog. 12.*

*Et unc' chescun home poit seiser tiel biens queux l' enemies le Roy port en Anglister, & poit retein. eux a son proper use, &c. vide 22 H. 3. f. 16 & 7 E. 4. 14.*

*Auxi si le mere relinquish ou perde un grand quantity de terre sur le shore, le owner de Manor, ou del terre procchein adjoynant, avera ceo come perquisite, & nemy le Roy, Vide Dyer fol. 326. Br. v. 27. contra.*

4. Also in some Cases the King shall have a fine for the misuser of a franchise, &c. Br. Franch. 14. 22. Aff. p. 34.

*Nota que Franchise allow in quo warranto, ou in Eyer, lier le Roy, Br. Franch. 32, 40, & 10 H. 7. 14. a.*

*Regul.*

*Unc' vide libro Intrat. tit. quo Warranto in fine, Ou Judgment fuit done pur le Def. & nient meins le Entre est, Salvo jure Regis, per que semble que le Judgment nest final, si le Roy ad autre droit.*

*Bona felonum, fugitivorum & utlag. & consance de pleas, home ne poit aver Co. 9. 27. & ceux per prescription, mes tantum per charter & graunt le Roy : Et uncore si 29. a. tiel charter soit allow in Eyre, semble que apres poient prescribe in eux per aide de tiel allowance, Stamf. de Prerog. 50. Br. Prescrip. 18. 56, 59, 60, & 64.*

*Market,*

*Market, Fair, Hundred, Leet, Warren, & Park, home poet aver ceux per prescription cibien come per Charter le Roy, & s'ils vient al maines le Roy, uncore ne serra extincit. Br. Prescrip. 64.*

*But if any man do hold oꝝ have any of these without the King's Grant, oꝝ lawful Prescription, it sameth to be enquirable in the Sheriff's Turn as a Purpresture.*

*Nota que nul poet a ceo jour, fair Park, Chace, ou Warren sans grant le Roy, Co. 11. 86.*

*Unc. home poet inclose son terre, mes il ne doit fair Park, &c. de ceo pur aler de Beasts Savage, sans licence le Roy; s'il fait, ils serra seise in manus Regis. Adg. vide Br. Acton f. Stat. 48.*

*Pur le difference inter Forest, Chase, Park & Warren, vide Cromp. Author des Courts, 146 & 148, and Mr. Manwood, fol. 7 & 22.*

*Auxi vide ibid. queux sont Beasts de Forest, & de Chase, & queux de Warren.*

*Wreck, Estray & waived biens, home poet aver ceux per prescription, & sans charter, ou allowance in Eire. vide 32 H.6. Abr. d'Ass. 79. & Br. Prescr. 32, 56, 60, 83. & Stamf. de prerog. folio 32 & 38.*

*Nota que bona felonum, fugitivorum, & utlag, & bona waviata, extra hura, & wreccum maris, si ceux vient al maines le Roy per Escheate, forfeiture outlawry, &c. ils serra extincit, & merge in le Corone, & le Roy avera eux arere, in jure Coronæ, Co. 9. 25. vide Pl. 219. a. & 238. b. Dyer 44*

*Ou franchise serra perde, & serra seise in maines le Roy, pur default de apparance in quo warranto, Br. quo war. 5, 7, 9, 11. Keil. 139 & 152. N. bre. 162.*

*Ou Franchise serra perde cu forfeiture pur non user, ou misuser vide Co. 9. 50. Br. Franch. 14, 22. & quo warrant' 8, 9. & Finch. 38. & 100. N. bre. 162.*

*The Book called the Mirrour of Justices treating of Franchises, lib. 4. saith thus, Si Bayliff de Franchise ne face Execution de Retorn del vic. del Commandement le Roy, le vicount poet Enter en le Franchise, & recouvrera le Roy son seisin, & issint devient ceo guildable, que devant fuit En franchise.*

*Et uncore Franchise ne serra seise sinon al suit le Roy in quo Warranto, Fitz. Franch. 1. Car le quo Warranto est properment a trier le validity del Franchise usurpe sur le Roy, ou forfeit; Ou le judgment serra que le Franchise serra ouste, & de seiser le Franchise in nosme de Distress, &c. (Finch. 100.) Et sur ceo issuer' brief ou precept al vic. de seiser le Franchise accordant & de respond' al Roy del profit, &c.. Br. quo War. 5. Fitz. le vic. poet seiser les biens de Felons, Fugitives, Outlaws, Waiffs, Strays, Wrecks, & tiels ex Officio.*

*Ou Franchise seise in maines le Roy, poet este replevy, vide Stat. de quo Warranto Anno 30 E. 1. Br. quo Warrant' 5. 7. & 11. Finch. 100. & Keil. 137. Mes ceo semble destre le grace le Roy de granter Replevin de eux, & nemy del droit, Pl. 372. a.*

*On Franchise ne poet estre graunt ouster. Br. Franch. 38. & quo War. 6, 8.*

But note, where the Lord of any Liberty or Manor, &c. hath by Charter and Grant from the King, or by lawful prescription or allowance, any of the Franchises or Profits, &c. here above mentioned, there the Sheriff, nor his Officers, are not to seize them, or meddle therewith; except they shall be forfeited by the Lord, and judgment given for the King in a Quo Warranto, as aforesaid, vide the Statute de Quo Warranto, A. 18 E. 1. & 30 E. 1.

If the Lord of the Franchise or Manor, shall be outlawed or otherwise attainted of Treason or Felony, or but outlawed in any personal Action (as it seemeth) there the King shall have the goods and profits aforesaid, as well within the Franchise, as without.

*Nota quod exitus, Fines, & Amerciamenta de Banco, vel coram ipso Rege in Cancellaria, vel coram Thesaurario & Baronibus Scaccarij, vel coram Justic' Itinerantibus, vel ad Gaolam deliberandum, vel coram Justic' ad pacem, &c. vel Justic' forestæ, vel coram Seneschallo & Mareschallo hospitij Regis, vel Clerico mercatorum, ne sont unques allow al ascun in Lechequer, sans special parols & que sont specifice in quel Court, ou auterfoits allow in quo Warranto, Dyer 269.*

*Auxi exitus tenen. vel fines & amerciamenta sur vic. Constabul. vel aliorum Officior. Regis, ne sont allowes la, sans tiel clause sc. licet tenentes, vel ministri sui Officiarij nostri fuerint, eo que sont Regal, Dyer 269.*

*Auxi le Prerog. de An jour & wast, nul mes le Roy poiet ceo aver, coment que il claime ceo per charter, ou autrement. Stamf. de prerog. 50. & Fitz. Coron. 310. vide plus hic c. 14.*

## C A P. VIII.

## Suit.

*Suit.*

**A**lso it is parcel of the Sheriff's Oath truly to keep the King's Suits: And if they have been concealed or withdrawn, the Sheriff upon knowledge thereof, must cause them to be done, or restored again to the King.

Now Suit it is a service which a man ought to do, by reason of his person, or by reason of his Land and Tenure; and to perform this, he ought to go to the Court of the King (or of some other) there to do that which appertaineth to the nature of his Suit (be it to be a Judge, Juror, Crper, Waplift, or to serve the Process of the Court, and such like) And in such Cases the party ought to attend in the Court, and to do that which appertaineth to his said Suit, Vide 9 B. 4. 3.

And yet where a man by his Tenure is to come to a Let, or Hundred, and to do there some special service, as to be Crper or Waplift, &c. they are no Suit services, Finch. 145.

And

And this seemeth to be meant here of Suit done, or due to be done, to the King's Courts (sc. to the Turn, County Court, and other the King's Courts:) and to this purpose there are two sorts of Suits, sc. Suit real and Suit service.

Fitz. Bar.  
c. 211.

Suit Real (or Royal) is a Suit which by the Common Law is <sup>Royal.</sup> due to the Sheriff's Turn or Leet, &c. (which are Courts Royals, viz. the King's Courts, And to these Courts all men of the age of twelve years or above, shall be compelled to come in person to learn and know the Laws, so that they may not be ignorant of things that shall be there declared and given in charge, and whereby they shall be governed. And it is called Real or Royal Suit because of their Allegiance, and this appeareth by common experience, when one is sworn (in those Courts to the King, and as in those Courts all men ought to be) his Oath is, that he shall be loyal and faithful Subject to the King. And this Suit is not due for their land which they have or hold, but it is due only *ratione del resiance del person*, by reason of their dwelling and abroad within the Hundred or Lat. Vide Finch. 125. & Terms del Ley, & Co. Lit. 100.

So that these Courts (the Sheriff's Turn or Leet) are principally to cause every man to do their allegiance to the King, and there to be sworn to the King to be his Leige-man: And besides in these Courts they are to enquire of such things as pertain to the King and Commonwealt.

But no man shall be compelled to do this Suit, but only where he is resiant or dwelling, and that but twice in a year. Vide Br. Leet 39, 42. 12 H. 7. 18. & 25 E. 3. 23. Fitz. 161.

Suit to the County Court is also a Suit Royal, and due by reason of resiance within the County, Finch. 115. See hic tit. County Court.

And so it may seem thereby that both the Sheriff's Turn, and the County Court, are both the King's Courts; And as the Sheriff by his Oath here standeth bound duely to keep the King's Suits, so inclusive he standeth bound duely to keep his said two Courts (the Turn, and the County Court) and to see that all Suitors belonging to the same Courts, give their attendance, and do their Suit and Service there.

Ibid.

Suit Service, is a Suit which by the Common Law properly is <sup>Service.</sup> due to the King's Court (as to the Sheriff's Turn or Lat twice a year) or to the Lord's Court (from three weeks to three weeks, by the whole year:) And this Suit service is due by reason of the Tenure of a man's Land, and ought to be done at every Court of every Lord, where he holdeth any lands or tenements of them.

That a man may hold Lands by Suit service to the Sheriff's Turn or to the Lat, Vide Fitz. 158. a. Fitz. Barr. 211. & Terms del Ley tit. Suit.

Also a man may hold Lands to do Suit service to the County Court, or Hundred Court, &c. Fitz. 158. a.

Par

Pur suit real, le party que fait default serra primes amerce; Et apres serra Br. Suit. 2. distraine pur le amerciament, Finch. 123.

Pur suit service (ou suit del Court) le Vicount (ou Seignior) poit distraine, le tenant, mes ne amercea luy, Br. Suit 2, 6, 16.

Si le terre charge ove suit due al Roy veigne in maines de divers persons, Ibid. chescun tenant serra charge ove le suit aperluy, sc. chescun de eux fera suit, 45 E. 3. f. 23. Fitz. Bar. 211.

Per Statutum de Merton cap. 10. Quilibet liber homo qui secta. debet ad Comitatum, Hundred, &c. vel ad Curiam Domini sui libere potest facere attournatum suum ad sectas illas pro eo faciendas: Inceo Statut<sup>o</sup> est intend<sup>o</sup> tantum de Suit service; mes al Torn del vic. ou Leet, la le Suit serra fait in person, & nemy per Atturmy, Vide Regist. 172.

Al common ley, devant ceo Stat<sup>o</sup> de Merton, chescun doit fair son Suit en proper person, & donque le mischief fuit, lou home tient de 2 Signiors, fils tiennes leur Courts ambideux al un mesme temps le tenant serra distrein, & nul default in luy, per que ceo Stat<sup>o</sup> ordeine que il poiet fair Atturmy.

Le party poiet fair son Atturney, per brief le Roy; Ou per son Warr. south son Seal, ou per ses Letters, sans suer ascun brief. Et si le Court, ou Seignior ou vic. refuse tiel son atturmy, il poiet aver brief de Attachment, & recoversa ses damages, &c. Fitz. 156. a. 157. c. d. & Fitz. Atturmy 106.

Brief de Attournato faciendo durer pur les vies del Signior & del tenant: mes semble que ceo determin per lalienation del Seignior ou per lalienation ou alteration del tenancy.

Les parols del dit Stat. de Merton sont, Quilibet liber homo, &c. Uncore Feme, Ecclesiastique person, ne Enfant deins age de 12. ans ne fera ascun Suit al Torn, ou Leet; mes auterment del Court Baron, &c.

Suit est dit in 4. manors, tous queux semble destre deins ceo Stat. Terms del Ley.

1. Suit Real, est per cause del Resiency (ut supra.)
2. Suit Service, est per reason del Tenure, ut supra.
3. Suit Covenant est lou home per Indenture Covenant de fair suit a son Court; & pur ceo home avera brief de Covenant.
4. Suit Custom, & ceo est lou jeo & mes Auncestors ont estre seisie de nostre suit demesne, & nostres Auncestors de temps dont Memory, &c.

Auxi ceo est lou Copibolders ou auter Customers tenants, &c. (que Estate ils ad) ont use de fair Custom service; & pur default del ceo Suit Custom, le terre serra seisie, &c.

And by the word Suits may be understood the King's Suits in Law, sc. that the King's Suits in Law shall be preferred, &c. wherein the Sheriff is for the King's profit to do his best endeavour according to his Office, sc. that the King's Debt be first levied. Vide hic cap. 10, 19, 25 & 58.

## C A P. IX.

## Rents.

**T**he Sheriff also by his Oath is bound not to assent to the decrease, to the lessing, ne concealment of the King's Rents, and whensoever he shall have knowledge that any of them been concealed or withdrawn, he shall do his true power to make them to be restored to the King again; and if he cannot do it, he shall certify the King, or some of his Council thereof, &c.

Note, That the Sheriff is Ballivus Comitatus (as I said before) and his County is also called his Bayliwick; and as a Bayliff of Manor is to gather up his Lord's Rents, and other Duties, so the Sheriff his Office is to gather up not only the common Honies and Profits of the Shire which be due to the King within his County, but also to gather up the King's Rents within his Bayliwick (as it seemeth) and for which he may distrain. See Fitz. 234. h. But at this day this rather belongeth to the Office of the King's Receivers, &c. Or to the Excheator to enquire thereof, Finch. 127.

For there be now particular Collectors and Receivers of the ordinary Rents of the King's Lands, &c. which do answer the same into the Exchequer. And the Sheriff meddleth not now with the gathering or levying thereof, except it be by Process out of the Exchequer; But the Excheator is the Officer to whom Process is usually directed concerning the King's Revenues, &c. Co. 4. 57. Fitz. 78.

And yet at this day if the Sheriff shall distrain the King's Farmer or Tenant for Rent due to the King, &c. and shall account for the same Rent in the Exchequer, this seemeth to be a good justification for the Sheriff, in an Action of Trespass brought against him for taking the Tenant's Cattel, &c. Liber Intrac. cit. Trespass.

Also for the King's ordinary Rents, upon Process directed to the Sheriff for the levying thereof, the Sheriff may levy the same, upon the Body or Goods of the King's Tenants, or of his Sureties (for default of the Tenant) or upon his Land, or of his Heirs, or upon the Executors, &c. of the King's Tenant, or upon other the possessors of his Lands or Goods.

By the word Rents, seems to be meant not only Rent services and Rent charges, &c. (due to the King) but also Farms or Farm Rents due to the King: sc. Rents reserved in fee farm, or upon Leases.

**¶ H. 5.** You shall find by the Statute made Anno 51 H. 3. de Scaccario, that Sheriffs might let to Farm the King's Wards and Elcheats, and were answerable for the Rent, &c.

Also by the Statute made 10 Ed. 1. de Scaccario, it appeareth <sup>10 Ed. 1.</sup> that Sheriffs are accountable yearly in the Exchequer for the Farms of Serjeants and Astarts, the Farms of Cities, Boroughs and Towns, and other Farms, &c.

Also by the Statute of 34 H. 8. c. 16. it appeareth that Sheriffs were charged with one Farm demanded in one whole Sum, growing of the issues and profits of certain of the ancient Demesnes of the Crown; As also of certain Rents thereto belonging: And with one other Farm growing of the perquisites and profits of their Courts: And with one other Farm of Purprestures, Astarts, Serjeanties, and minute Rents, &c.

These words Purprestures, and Astarts, seem here to be Trespasses or Offences done in Forests, hurtful to the Vert and Venison of the same: This Purpresture of the Forest, is by building and new creating of houses, and other Inclosures within a Forest, without the special licence of the King, or of his Justice in Eyre. Manwood 54.

And the word Astart is an ancient English word signifying to make plain, &c. Astartum est quod redactum est ad culturam: And an Astart of the Forest is the destroying of the covert, by cutting and stubbing up, or plucking up by the roots those Woods that are Chickets or Coverts of the Forest, to make the same a Plain or arable Land; this is fineable to the King, if it were not done by the King's Licence: And if any man would have the same to continue, he must compound with the King, or with his Justice in Eyre. Now upon composition for the continuance of such Astarts, or for the toleration or suffering of such new erected buildings, or inclosures within the Forest, there was a yearly Rent reserved to the King, which was at the judgment and discretion of the Lord Chief Justice in Eyre of the Forest, and entered of record at the time of the arrenting thereof. And in the times of King Edw. the first, Second and Third, when the Justices of the Forest did usually hold their Iters, great benefit did yearly grow to the King by these fines and Rents. But of later times, there hath ben seldom any Justice-seat at all kept for Forests: And when kept, very slenderly performed: the Records not kept, or not returned into the Exchequer; and so the said Rents are now unknown, &c. Vide Manwood and Minsh.

Also by the Statute of 14 Ed. 3. c. 9. it appeareth that the Sheriffs <sup>14 Ed. 3.</sup> did Farm of the King the Hundreds and Wapentakes.

Also by the Statute of 1 H. 4. c. 11. it appeareth that the Sheriffs <sup>1 H. 4.</sup> were charged with the ancient Farms of the Counties; and that they farmed the Counties of the King. Quære what these Farms of the Counties and of the Hundreds are.

And by the Statute of 4 H. 5. c. 2. Sheriffs shall be charged to the King for all such things as he or run in yearly Farms or Demands.

See also the Statute of 2 & 3 Ed. 6. c. 4. of Farms, and Vicounties, &c. due to the King and withhelden from him.

Note, That there be certain Farms called Vicounties, which the Sheriff for his time payeth a certain Rent for to the King, and maketh what

what profit he can of them: And these Vicountiels seem to be the farms mentioned in the former Statutes of 10 Ed. 1. 14 Ed. 3. 1 H. 4. 11. 4 H. 5. 2. 34 H. 8. & 2 & 3 Ed. 6. c. 4. here before mentioned.

But more particularly these Vicountiels are said to be certain Duties of ancient time, due to the King, &c. As for Castle Guard; for the Sheriffs's Aid; for the Lat fee, &c.

And these are commonly called certainties, which are gathered up by the Sheriff or their Bailiffs. And see Crompt. 47. where a Sheriff prescribed pro Auxilio Vicecomitis.

And for the farms called Vicountiels, for which the Sheriff for his time payeth a certain Rent to the King, and may make what profit he can of them. See the Statute, Anno 4 H. 5. 2. All Sheriffs shall have allowance upon their accounts, by their Oaths, of things casual, that be not in yearly farms or Demands.

2 H. 7. 6. By Brian and Ratcliff, the Sheriff so soon as he is made Sheriff, is accountable to the King, of all farms, Rents, Issues and Profits of the County, which run in account under the name of Vicountiels: But for the Extreats of the Green War (sc. out of the Exchequer) and such others (as for the fines and Amerciameats set in any Court upon Offenders, Issues lost for default of appearance, the King's Debts, &c.) the Sheriff is not chargeable as Sheriff at the first, nor at any time after, nor to levy the same, except that the summs, sc. le'streats del sommes come to him out of the Exchequer, and then when he hath them, he is chargeable and accountable.

And by Blage Ann. 6 H. 8. the Sheriff is accountable for the profits of the County, but (saith he) that must be understood in a sum in gross for the farm of the profits of the County, Keil. 173. hic c. 122.

What the Revenues, Issues and Profits of the County be: See 20 H. 7. fol. 12. hic antea cap. 3.

In an Action of Trespas brought against the Sheriff, for breaking the Plaintiff's close, and taking his Cattel, &c. the Sheriff justified for distraining for Rent due to the King, in jure Coronæ, by prescription as parcel of the farm and Profits of his County of N. to the use of the King, &c. and that he had accounted for the same in the Exchequer, Libro Intrac. tit. Trespas, in Rent div. 6.

Note, That in the former case, the servant of the Sheriff justified by the command of his Master, &c. Et quod in clauum prædictum portis inde tunc apertis intravit, &c. So as it seemeth the Officer cannot justify to break open a Door or Gate, to distrain for the King's Rents, &c.

*Mes nota que si home tient del Roy, et son Rent est areve, le Roy (ou ses Officers) poient distreine in les auters terres, cibien tenus des auters, come de luy mesme. Et eadem lex pur son Fee Ferm, 44 E. 3. Br. Prerog. 77. & 13 H. 4. 6. Pl. 239. a. Finch.*

*Et issint est pur Rēnt charge, Roy poet distr' pur ceo in tents auters terres*  
13 H. 4. Br. Prerog. 68.

*Si tenant le Roy alien ascun parcel sans Licence, le Roy (ou son Officer) poet distrain pur tout son Rēnt, in le parcel issint alien, mes s'il ad licence, &c. le alien ne serra charge ouster le quantity del terre que il ad purchase; & a ce purpose il poiet aver bief de Onerando pro rata portione, Fitz. 235. a.*

## C A P. X.

## The King's Debts.

**T**he Sheriff from time to time during his Office, shall with as much convenient speed as may be, levy the King's Monies, upon all such Schedules, Extreats and Proses as shall be directed to the Sheriff out of his Majesty's Court of Eschequer.

And at the King's Courts shall deliver into the Eschequer the Extreats of Amerciaments, fines, Issues, and other things assessed, &c. before them. *See hic c. 13. 90, & 122.*

Debts.

Land.

Sureties.

By the Statute 9 H. 3. c. 8. the King nor his Waplift shall not <sup>9 H. 3. c. 8.</sup> seize only Land or Rent for any Debt, as long as the present Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be <sup>Plo. 440.</sup> ready to satisfy therefore. Neither shall the pledges or surerries of the Debtor be distrained, as long as the principal Debtor is sufficient for the payment of the Debt: And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the Debt: And then if the pledges will, they shall have the Lands and Rents of the Debtor, until they be satisfied of the Debt, which they before payed for him (except that the principal Debtor can shew himself to be acquitted against the said surety) Fitz. 137. c.

*Nota que tanque le Stat' de 33 H. 8. c. 39. le Roy ne poet pur dett, touche la terre, ou heir, d'ascun Dettor, si les biens del Dettor fuer' suffic' de satisfaire le Debt, & ceo suit per force del primer part del avantdit Stat' de 9 H. 3. c. 8. Vide Plo. 440. a.*

*Mes quant al prochain part del dit' Stat' ceo semble d'estre void, quant al Roy. Car in chescun manner le Roy avera sufficient suerty de tout que a luy appartient, soit que le principal soit sufficient ou nient suffic'. Et in chescun case si le principal soit assés suffic' uncore le Roy poet eslier, le quel il voet distraire le principal, ou les pledges.*

*Nota auxi que le forme del Eschequer (ut dicitur) est, que si un home prist un ferme de Roy, & trouve suerties pur le ferm ou rent, que si le rent soit arere, le summons del Pipe issuer' cibien envers les pledges come vers le principal: Mes le vic' per force del dit Stat. ne fera execution des biens les pledges ou mainpernors si non pur default del principal.*

*Auxi le Roy poet distr. ou charge les pledges ou Sureties sans especialty: mes envers les pledges nul action est dene al Com. Ley per ascun party sans specialty, ou Recognizance ferpris par le Roy, Vide 44 E. 3. fol. 19. Fitz. Dett. 126. per le darein case.*

And now by the Statute of 33 H. 8. cap. 39. not only the Land, but also the Heir of the King's Debtor are chargeable to pay the King's Debt, Pl. 440. pea the Sheriff may levy the King's Debts either upon the Body or Goods of the Debtor, or his Sureties; or upon their Lands in their own Hands, or in the Hands of their Heirs or Feoffees, or of any other person claiming or having the same from them by descent or purchase. Also the Executors, Administrators, Assignees, and other possessors of the Goods of the King's Debtor, are chargeable to the King's Debt. See hic postea.

9 H. 3. 18

Also by the former Statute of 9 H. 3. cap. 18. If any that holdeth of the King any Lay fee do die, and the Sheriff or Bailiff do shew the King's Letters Patents or Summons for debt which the dead man did owe unto the King, it shall be lawful to the Sheriff or Bailiff to attach and inrol all the goods and cattels of the dead, being found in or upon the Lay fee to the value of the same debt by the sight of lawful men: So that nothing thereof shall be taken away, until the King be clearly paid off the debt, and the residue shall remain to the Executors to perform the Testament of the dead, &c. *Roy serra primes pay.*

*Nient obstant que ceo Stat. (de 9 H. 3. c. 18.) parle lou ascuntient del Roy ascun Lay fee, &c. Unc. ceo Statute serra intend des ascun auters Debtors le Roy en general.*

*Auxi si ascun home soit Imprison par le dett de ascun auter home, que de Roy, in quel lieu, qui il soit, sil con. luy mesme detter al Roy, la il serra remove al Fleet sur tiel Conusance, & quant le Roy, est satisfie donque il serra maund al auter lieu (ou prison) ou il fuit Imprison al primes sil ne soit detter al Roy ailours, &c.*

*Le Summons mention in ceo Stat. de 9 H. 3. cap. 18. semble destre un Scire facias hors del Eschequer; Et sur tiel Summons ou Proces nient obstant le dit Stat. dit, Liceat Vicecomiti, &c. attachiare & imbreviare, Omnia Bona & Catalla defuncti, &c. unc. le vic. poet vender eux, solonque le quantity del dett, & per visum vicinorum, sc. q. les biens seront prise per eux.*

31 H. 3.

Afterwards by the Statute De districtione Scaccari, made Anno 15 Hen. 3. Forasmuch as the Commonalty of the Realm had sustained great damages by the wrongful taking of distresses, which had been made by Sheriffs, and by other the King's Bailiffs for the King's debt, or for any other cause: It was therefore provided and ordained, That when a Sheriff, or any other man (upon Process out of the Exchequer) doth take the Beasts of other by way of distress for the King's debt, &c. they to whom the Beasts do belong may give them their feeding without disturbance (so long as they be impounded) without giving any thing for their keeping. *The owner may feed Cattel impounded.*

*No sale within  
fifteen days.*

And that the Beasts, nor no other distress taken for the King's Debt, nor for any other cause be given ne sold within fifteen days after the taking: *See Br. Distress. 32, & 72. and the Statute of 51 H. 3. & 7 E. 6. cap. 1.*

*Ibid.*

And if any bring the Tally of a payment made in the Exchequer, the distress shall cease: And if he bring the Tally (or acquittance of any Sheriff or Bailiff) of payment made to them of the thing demanded, and will find pledges that he will appear in the Exchequer upon the next account to do as right shall require, then the distress shall cease; and the Sheriff or Bailiff shall cause him to be attached that ought to have acquitted him, that he may appear upon the same account to do as right shall require, and there shall have the names of the pledges.

*Ibid.*

*Cattel not di-  
strainable.*

Also it is provided by the same Statute, that no man of Religion, nor other, shall be distrained by his Beasts that gain his Land, nor by his Shep for the King's debt nor the debt of any other man, nor for any other cause by the King's or others Bailiffs, but until they can find another Distress or Cattel sufficient, whereof they may levy the Debt, or that is sufficient for the demand (except impounding of Beasts that a man findeth in his ground, damage felonant, after the use and custom of the Realm:) and that such Distresses be reasonable after the value of the Debt or Damage according to the value, and by the estimation of neighbors, and not by strangers, and not outrageous: Howbeit the King willet and commandeth that Sheriffs, or their Bailiffs that have received the King's debt of the summons of the Exchequer, and have not acquitted the Debtors thereof at the next account, shall be punished, 51 H. 3. 52.

*H. 3. c. 4.  
See 28 E.  
1. c. 12. Fit.  
174. b. P.  
dist. 8. 11.*

*A distress shall  
be reasonable.  
La vic' acqui-  
tera le dettor.*

Also by the Statute of 28 Ed. 1. no distress shall be taken of Plow-cattel for the King's debt, &c. And such distresses shall not be over great, nor driven too far.

*28 E. 1.  
cap. 12.*

*The King's  
Debt.  
Extreats of  
Fines, &c. shall  
be delivered in  
the Exchequer.*

By the Statute De Scaccario, made Ann. 51 Hen. 3. It was ordained, that all the Justicers, Commissioners and others should from thenceforth deliver into the Exchequer at the Feast of Saint Michael from year to year the Extreats of Fines, and Amerciaments made and taxed before them, and of all things whereof the Extreats are wont to be delivered there: and that they of the Exchequer shall make Extreats of the summons through all Shires, &c. De pace 560. & Stat. 15 E. 2.

*51 H. 3. 2.  
15 E. 2.*

*Le vic' acqui-  
tera le dettor.*

Also by the Statute made 3 E. 1. c. 19. It was ordained, That Sheriffs, &c. (which have levied or received the King's debt) should from thenceforth lawfully acquit and discharge the debtors at the next account after they have received such debts (and then the debt shall be allowed in the Exchequer, so that it shall no more come in the summons:) And if the Sheriffs otherwise do, and thereof be attainted, he shall pay to the Plaintiff thrice as much as he hath received, and shall also make fine at the King's pleasure: and besides the Sheriff stands bound thereto by his Oath, Article, 4. *See also the Statute of Westminster 4. als. dictum Stat. de Attindis. Anno 13 E. 2.*

*3 E. 1. P.  
Account.  
52.*

Also

3 Ed. 1. 29. Also by the same Statutes Proces (sc. the summons of the Exchequer) for the levying of the King's Debt, shall be shewed to the Debtor that demands the sight thereof without denial or fee. And the Sheriff shall make Callies (or Acquittances) to all such as shall pay him (or his Officers) their Debt due to the King, &c. 27 Ed. 1. c. 2. *Proces shall be shewed.*

Note, That the Summons of the Exchequer is a Scire facias. If the Debtor hath once paid the King's Debt to the Sheriff, &c. and notwithstanding the same be another time demanded of the party, &c. the said Sheriff shall pay to the party grieved his treble damages; and besides shall make fine to the King, 3 E. 1. c. 19.

Also by the Statute 1 R. 2. c. 5. when any Debts be once paid, and the Callies thereof made, rejoined, and allowed in the Exchequer, this Debt shall never after come in demand. And if any Clerk of the Exchequer shall make any Proces after the Tail allowed: Or if any Clerk of the Exchequer shall make out any Proces for a Debt that is paid, he shall lose his Office, and be imprisoned until he hath made grace with the party, &c. 1 R. 2. c. 5.

Again by the Statutes of 42 Ed. 3. c. 9. & 7 H. 4. c. 3. Estreats sealed under the Seal of the Exchequer, shall be shewed to the party indebted, by the Sheriff or his Officers, when they levy the King's Debts, and that which is paid shall be totted. *Estreats sealed shall be shewed.* 42 E. 3. 7 H. 4. Lib. 4. 16.

And Sheriffs shall account by Estreats so totted, and by none other: and the Copy of the Estreats, wherein they touch the Franchises of Lords, shall be delivered to the Bayliffs of the Franchises, under the Seal of the Sheriff, and the same Bayliffs shall yield their account in the Exchequer, by the same Copies so delivered, 42 E. 3. c. 9.

Note, That the Green Wax of the Exchequer, is a word used for the Estreats delivered out of the Exchequer to the Sheriff, under the Seal of the Exchequer Court, to be levied in the County, Minsh. & vide hic cap. 122.

28 E. 1. 12. If the King's Debtor can find sufficient Sureties, to pay to the Sheriff the King's Debt, before the day of the Return of the Writ, the Sheriff shall deliver the Distress (or Beasts) taken again; or otherwise the party may have an Attachment against the Sheriff or Officer, &c. Fitz. 174. b. c. *Distress redelivered.*

*Dets poient estre due al Roy in divers manors: sc. per atteindre, uslary, forfeiture, ou done, ou per Judgment, Recogn. ou Specialty.*

*Nota que tous obligations recogn. et specialties faits al Roy, serra de force Regule del Stat. Staple: Vide hic Stat. Staple, & Stat. 33 H. 8. c. 39.*

*Les suits le Roy serra prefer devant le suit d'aucun autre, et le Roy avera Execution pur ses Debts devant aucun common person: sc. si non suit soit commence ou proces soit agard pur le dit dett' devant l' autre ad Judgment, vide Stat. 9 H. 3. c. 18. & 33 H. 8. c. 39. Br. Prerog. 71. Et hic postea Execution sur Stat. Vide Co. Lit. 131. b.*

Nota

*Nota que le Roy poet privilege son dettor, que nul avera execution vers luy, tanque le Roy soit satisfie, Br. Prerog. 105. Co. Lit. 131. b.*

But the other Creditors may have their Actions against the King's Debtors, and proceed to judgment, but not to execution, unless they will pay the King's Debt, &c. Stat. 25 E. 3. c. 19.

Yet in some cases the Subject shall be satisfied before the King; for regularly whensoever the King is intitled to any Fine or Duty by the Suit of the Party, the Party shall be first satisfied, as in a Decies tantum. And so if in an Action of Debt, the Defendant deny his Debt, and it is found against him, he shall pay a Fine to the King, but the Plaintiff shall be first satisfied: And so in all other like cases: And so it is in Bills preferred by Subjects in the Star-Chamber, their Costs and Damages (if any be) shall be answered before the King's Fine, &c. Co. Lit. 131. b.

*Distress.*

*Si le vic' (ou ses Officers, ou aucun autre) distrein pur dett le Roy, &c. les Beasts del carucat ou barbutts (lou ils poient trove auters); Ou prist excessive Distress; ou amesne le Distress troppe longe; le party grieve poet aver Attachment sur le Stat. vers tiel Viscount ou Officer, &c. Fitz. 174. b. c. ou le Party poet aver Action de Trespas vers le Viscount, Fitz. 90. b. Uncore vide Fitz. tit. Avowry 239. que Distress ne serra dit excessive, ou le Roy est Party.*

The Sheriff and his Officers may distrain for the King's Debt; &c. in the King's High-way, or in the Common Street, 52 H. 3. c. 15. Fitz. 173. f. 43 E. 3. 30. Fitz. Avow. 87. & Fitz. 173. f.

And yet if they be the Beasts or Goods of a Parson, &c. they may not be distrained in the King's High-way for the King's Debt, 9 E. 2. cap. 9.

Neither may the Sheriff, nor any other Officer, distrain in the glebe of Parsons, nor in the ancient Fess of the Church. Ibid. & Fitz. 173. e.

*Et si aucun vic' ou autre person fait contrary al ceo Stat. donque il que est issint distrein poet suer brief sur ceo Stat. Commandant le vic', &c. quod non distringat, &c. & que sil ad distrein al contrary, quod sine dilacione relaxet, &c. Ou le party que est issint distrein poet aver Action sur ceo Stat. envers le vic', &c. Fitz. 173. e. f.*

*Mes l' Officer le Roy poet bien Enter in aucun Parsonage pur seiser biens forfaits: Et si le Parson soit utlage l' Officer poet seiser ses biens.*

Also they may distrain for the King's Debt in the possessions of Ecclesiastical persons (not being the ancient Fess of the Church in the time of King Edw. the Second) 9 E. 2. c. 9. Fitz. 173. e. 174. a.

And by the Book 27 Ass. p. 66. the King's Officer may distrain for Issues in the Church or Sanctuary: 1c. If he can find no Goods elsewhere to distrain, Br. Distress. 35. Co. 5. 92.

But they may not distrain or take for the King's debt (or for any issues or amerciaments due or forfeited by any Ecclesiastical person) anp

any Goods which do belong to the Church or Parish, and if they do, the Churchwardens may have their Action against the Officer for the same.

They also for the King's Debt, may carry or drive the distress out of the County (as it seems.) See Fitz. Bar. 275, & Distress. 16. And yet they may not drive any distress too far. See the Statute of 28 E. 1. cap. 12.

Also they may sell (after fifteen days a distress taken by them for the King's Debt. See Br. Distress. 32, 40, & 72 & Stat. 51 H. 3. sc. if the Debt be not satisfied, &c. in the mean time. *Prerogativa Regis.*

And so of a distress taken for the xv; or for Charges of the Knights of the Parliament, 8 R. 2. & 11 H. 4.

But for the King's Debts, as also for Fines, Issues and Amerciaments, the Sheriff is not chargeable or accountable for the same, neither may he distrain for, or otherwise levy the same until he shall have warrant to levy the same by Executors, &c. under the Seal of the Exchequer, and those Executors shall mention how much every one is to pay; and by those Executors the Sheriff is to receive them, and to make Acquittances or Callies, according to the said Statute of West. 1. cap. 19.

**Queux persons & terres serra chargeable al payment  
del Debts le Roy.**

**N**ota que Debtors le Roy (sur specialty) leur Corps, terres & biens, & leur Heirs, Executors, Administrators & Assignees, & aux les possesseurs del biens le mort, sont chargeable, Co. 11, 93. plus hic c. 25.

Mes si un Joynt-tenant in Fee-simple soit in Debt al Roy, & devy, nul extent serra sue envers le terre in mains del Survivor, Plo. 321. Co. Lit. 185.

Le heire del Debtor le Roy, (que ad terre per discent, ou done son auncetor) serra chargeable, See hic tit. Statute Staple.

Iffint le heire in Tail est chargeable, See ibid.

Debtor le Roy devy sans Heir ou Executor, proces serra fait vers ses Feoffees, 'de respond' & satisfaire le Roy, Dyer 160.

Terres del Debtor le Roy, vient al maine de divers persons, ils serra tous charge; & tout le terre, &c. & chescun parcel del ceo, serra entierment & nemy severalment charge, 33 H. 8. cap. 39. P. Account' 9. & Co. 7. 20. b.

**13 Eliz. 4.** Queux Accountants, ou Officers a vera leur terres, &c. liable al payment del Debts le Roy, in tiel manner come s'ils ussent estre lie al Roy per obligac', &c. Vide Stat. 13 Eliz. c. 4. P. Accountants 29.

Auxi ceux persons en suants sont accountable al Roy, &c.

1. Chescun

1. Chescun que prist ascun biens le Roy.
2. Chescun que enter en ascun terres le Roy per tort.
3. Officers le Roy, que dispose son Treasure sans garrant soubz le Grand ou Privy Seal.
4. Feasors de illoyal garrant.
5. Receivers sans loyal garrant.
6. Cestuy que est instrument, ou means per que le Roy ad perde.
7. Stewards de Manors ou Courts le Roy ; que assesse petit fines, & prent bribes, Co. 11. fol. 90, &c.

Si terres d'ascun accomptant al Roy ; Ou si ascun argent biens ou chattels personnels de Roy veigne al maines de ascun subjeet (per maister de Record, ou per maister en fait) le terre de tiel subjeet est charge per ceo & subjeet al seiser le Roy, en quecunque maines que il. veignent apres (soit il per discent, ou per purchase, ou autrement) Car le Roy puet aver cel seise en les maines del Debtor, & per mesme reason en les maines de chescun que vient eins desoubz luy, Quia Nullum tempus occurrit Regi, Crompt. Author. des Courts 106.

Accountants purchase terres in le noisme de auters persons, serra liable al payment de Debt le Roy, P. Accountants 31. Co. 11, 90, &c.

Ibid.

Trove fuit per Inquisition, que Customer que fuit in Debt al Royn purchase terre ove argent le Royn, & per Corvin ad cause le estate d'estre fait a son amy, ceo fuit seise en maines le Royn tanque, &c. Dyer 160.

Le Statute de Accountants fait, 13 E. c. 4. ne extend, al terres del Evescues queux ont collection del subsidies ou Tenths, P. Accountants 33.

Ibid.

Ne extendra al ascun Accountants, sinon que son annual receipt, collection, ou charge, excede le somme de 300 l. P. ibid. 34.

Nec extendra al ascun Accountants, queux ne sont de fair present payments, &c. P. ibidem 35.

Nec extendra de charger ascun Vicount, Escheator ne Bayliff de liberty, ne lour terre, &c. per ascun chose touchant lour Offices ; ne pur ascun Money per eux receive, per reason de lour Offices, P. ibidem 36.

Uncore chescun de ceux persons, & lour terres, serra liable al payment del Debts le Roy, in mannor come ils fuer chargeable devant.

Mes si accountant le Roy, possesse dun term pur ans, vend ceo bona fide & le vendee enter, adjudge que cest lease ne serra extendable ou liable al Debt le Roy, car c'est forsque chattel : Auxy Receiver, ou auter accountant in Debt al Roy, ne serra in peior case que une Felon ou traitor, queux apres Felony ou Treason, & devant Conviction, poient vend bona fide pur lour sustenance, &c. lour chattels real ou personal, Co. 8. 171.

*Si Debtor le Roy morust, le Roy serra primes pay son debt, 9 H. 3. c. 18. See Br. Prerog. 71. & hic postea execution fur Stat.*

*Le Executor & Administrator del Debtor le Roy, aiant assets, sont chargeable al Debt le Roy, &c. 33 H. 8. c. 39. Et semble que le Common Ley fuit issint, devant ceo Stat. Br. Prerog. 126.*

40 Aff. p.  
36.

*Si un Joyntenant soit Debtor le Roy, le possession de son Compagnion ne serra charge, mes tantum le possession que appartain a luy que est le Debtor : uncore per Thorpe, si l'un n'ad riens l'auter responder. Quare.*

*Baron & feme ont Term, & le baron receiva les deniers de Sr. H. Sp. que fuit attain (per que les dits deniers pertein al Roy) & puis le baron devy, le Roy sur ceo matter trouve, avera le Lease le baron & feme in Execution, &c. 50 Aff. Pl. 5.*

Br. Distr.  
72.

*Mes le Roy ne poit distrain pur debt le baron, sur le dower la feme, ne in sa Inheritance, ne in le joint estate ou purchasé que el aver ove son baron : mes file baron fuit in debt al Roy devant le couverture, la le Roy poit distrain in le dower del feme, Vide Fitz. 150. q. & 151. Co. Lit. 31.*

*Vide le case Sr. Will. Candish Treasurer del Chamber, il esteant seise del terre, Covenant d'estoyer seise de ceo, al use luy mesme, & sa feme, & le heirs le baron, & devy, la feme prist auter baron, & proces ad Computandum issuint envers le 2 Baron & sa feme (qui sunt return terre tenants in jure uxoris) de accompt. pur le arrerag. due al Royn, &c. Et fuit adjudge que ils accompt. quia terre tenants de ceo terres de que Sr. W. Candish fuit sole seise apres le office a luy grant. Mes si la feme ust estre joint purchaser devant l'office grant, ceo terre ne serra liable, Dyer 224, 225. & Plo. 321.*

*Auxi vide Fitz. 45, 46. Que si le viscont ad proces hors del Exchequer a levier les debts le baron, que il doit al Roy, ou si le viscont ad proces hors del auter court de levier certain debts due per sa baron al auter person, uncore le viscont ne doit distrain in le terres que le feme (apres mort son baron) tient en Dower, ou de joint purchasé ove sa baron, ou de sa inheritance demesne.*

*Et sic vide que le Roy, ou ses officers (sur proces, &c.) poient distrain pur det due al Roy : Et si home soit indet al Roy, quel debtor ad tenants que doient rent a luy, le Roy poit fair levy son det sur ceux tenants (sc. de leur biens) & ceo serra bon barre pur eux vers leur Seignior, que est debtor al Roy, & que ils ad ceo pay al Roy per levy, &c. 21 H. 7. 12. Br. Prerog. 39.*

*Nota, debtors le Roy serra gree al Roy pur leur det in le Eschequer, & nemy in Banco, nec in aucun auter court (come semble.) Vide Fitz. Decies tantum 12.*

*Mes ore per le Stat. 33 H. 8. cap. 39. Suits pur debts le Roy, & auxi Composition pur eux (come semble) poient estre en les Courts ou ils sont due, sc. en les several Offices ou Courts del Duchy, Court de Augmentations, & Court de Gards, &c.*

*Deniers bail in banco, ou in auter Court, poit ester stay & arrest la, pur det le Roy, ibid.*

*Si deux sont indet al Roy & le Roy releafe al un de eux tous detrs, ceo ne Releaser l'auter, 2 R. 3. fol. 4. Br. Prerog. 124.*

## C A P. XI.

## Issues.

*Issues.*

**T**he Sheriff so soon as he is made Sheriff is accountable to the King in the Exchequer for all manner of Issues and Profits of the County, which run under the name of Vicountiels, 2 Hen. 7. fol. 6. yet he is accountable for these in a Sum in Gross. See Keil. 173. hic cap. 9.

But for other Issues the Sheriff is not accountable, nor shall be charged therewith, until they shall be Estreated under the Seal of the Exchequer, and the same Estreats delivered to the Sheriff: Neither shall the Sheriff levy any such Issues without such warrant, Vide Stat. 27 E. 1. c. 2.

And then by his Office he is (upon such Process out of the Exchequer, &c.) to gather up, and to bring into the Exchequer such Issues and Profits, &c. Stat. de finibus 27 E. 1. cap. 2. 42 E. 3. c. 9. 2 H. 7. fol. 6. & Br. Parent. 105.

Exitus (Issues) pluraliter usurpatur, & Redditus annuos, vel alia terrarum commoda significat, *Corv. Index.*

The word Issues (in our Law) is sometimes used for the Profits growing to the King, &c. as an Amerciament, Fine, Forfeiture or Punishment, assessed upon Juroys, &c. for default of appearance, &c. And sometimes for the profits of Lands or Tenements themselves.

And so the word Issues (in our Law) seemeth to be taken three ways, or in three manners.

First, For such Issues and Profits of the County, which go under the name of Vicountiels, of which see hic antea cap. 3.

Secondly, For the Issues and Profits of the Lands themselves: As where the King is Entitled to have the Lands or Profits of Lands of Persons Attainted or Outlawed, or for Alienation without Licence, for Alienation in Mortmain, for a Condition broken or the like; Of this also see hic antea cap. 6, & 7.

Thirdly, For Issues to be lost for default of appearance (i. e. by Juroys, or by the Tenant or Defendant, &c.) of which here: But these last the Sheriff may not levy, until they be Estreated to him, &c. for without warrant he may not levy the same.

*Issues per de per  
assault.*

Issues set and returned by the Sheriff, upon the Defendants or Juroys, shall be forfeit to the King, by reason of the default of appearance, and shall be levied by the Sheriff, and of these, Vide hic postea Return of Issues, cap. 89, 90, & 91.

Issues

Issues forfeited by Witnesses for default of Appearance. See the Stat. 12 E. 2. cap. 1. But this seemeth to have been in Cases where the Dæd was denied, and then Process went out for them, and that they were to be joynd with the Jury, &c. Vide Fitz. Process 17, 126, 141, 181, & 5 H. 7. fol. 8. & Co. 1. 6.

And if such Issues returned upon any man be never so great, the Party hath no Remedy.

Finch. 86. *Sur Grand Cape, le terre serra prise en mains le Roy, & le Vic' serra Accomptable pur les Issues del dit terre, vide Fitz. Amerc. 1. & Disceit. 33. Stamf. de Prerog. 84. b. Co. 7. 38. Auxi quant aucun Action Real (sc. de plee de terre) est port, & le Tenant appear & apres fait default, un petit Cape issuer de seiser les terres en mains le Roy, &c.*

*Et q. chescun Cape est al use del Roy, Terms del Ley, tit. Cape.*

*Et semble que en tous Cases lon terre est seise en mains le Roy per le Vic' que le Vic' serra charge del Issues & Profits del ceo, de le temps que le terre fuit issint seise, & q. il accompt. de ceo in le Exchequer sc. del Issues trouve sur le Default, tanque judgment pur le demandant, f. 345. vide Fitz. Disc. 46. & N. br. 51. mes vide hic cap. 62. Que sur Grand Cape, nient obstant ceux parols Cape in manum nostram, &c. le Vic' ne poet seiser le terre in mains le Roy, &c. Vide N. br. 51.*

And yet as in personal Actions, the Process of Distringas is but for the taking of Pledges of the Defendant for appearance: So the Process by Cape in Real Actions, is but for seising of the Land for the same purpose.

What is contained under the name of Issues. See more hic postea, Return of Issues, cap. 89.

How much the Sheriff must Return in Issues upon the Defendant, &c. Ibidem.

What Issues he must Return upon Juroz, Ibidem.

The Sheriff shall levy no Issues without Warrant, Ibidem.

Issues forfeited, and upon whom, and on what Lands they shall be levied, &c. Ibidem & hic postea tit. Forfeiture.

If the Sheriff shall Return a Juroz in Issues, which is not sufficient, he is punishable, Ibidem.

So if the Sheriff shall Return any Issues upon any Juroz, or Hundredoz, which was not lawfully Summoned, &c. Ibidem.

Sometimes also there be Issues set by the Court, as an Amendment, Forfeiture or Punishment for default of Appearance of Juroz: Vide Br. Amerc. 35. Fitz. Essoin 123. & Assize 65. Br. Amendment 55 & 60. & Jurors 15, 18, 25, & 33.

No Officer or other person shall collect or levy any Issues Created, but only of the right person charged with the payment of the said Issues, &c. 27 Eliz. cap. 7. hic cap. 85.

If the Sheriff shall Return the Issues of any Recognisor, Pledge, <sup>27 Ed. 1.</sup> or Mainpernor, which at the time of the Return was not sufficient <sup>c. 2.</sup> to answer the said Issues and Amerciaments, the Sheriff himself shall answer, and shall be therewith charged in the Exchequer, <sup>27 Ed. 1. P. Sheriffs 19.</sup>

*Issues de terres.* Apres mors del Tenant le Roy in Capite, le Roy avera primer seisin, sc. les Issues de tous ses terres, &c. Vide Stat. 17 Ed. 2. c. 3. & Co. 8. 172. & 9, 132.

De quel temps Roy avera les Issues del terres le heir son Tenant, Vide Co. 4. 59, 126, & 8. 170.

De quel temps Roy avera les Issues del terre son Tenant, que alien sans licence, &c. Vide hic tit. Fines, Co. 8. 170. Stamf. de Prerog. 84.

Cestuy que bappa Livery extra manus Regis, que ne doit aver Livery, il respondera les Issues al Roy arere, Vide Fitz. N. B. & Br. Issues 19.

Quant le Roy seise per reason de Eigne droit ou title, la Roy serra respond<sup>r</sup> des Issues, del temps de son title & interest primes accrue, &c. Vide Fitz. Gard. 1. & Judgment 69. Stamf. 84. Co. 8. 170. Come ou le Roy enter pur Condition enfreint, ou pur Mortmain, &c.

Mes quant le Roy est intitile, ou seise ascun ters, Nomine districtionis, come in case de Alienac<sup>o</sup> sans licence pur terre in capite, ou de Marriage sans Licenc<sup>er</sup>. Ou jure Protectionis, come in case de Ideocy, la le Roy poet respond<sup>r</sup> del Issues, a le temps de son title trova per Office, &c. Co. 8. 170. Stamf. 84. Auxsi quant home tient del Roy in Chivalry, & son Homage ou son Relief soit arere, & Distress issira hors del Exchequer ad respond<sup>r</sup> nobis del replevin, vel ad faciendum Homagium, &c. en cel Distr. il perdera Issues, &c.

Issues de terres de Felons, Fugitives, & Uilaws, See hic fol.

Tenant le Roy dewy seise, & Estranger abate in part des Tenements del heir, le abator serra charge ove les Issues del ceo, & nemy le heir, Br. Issues, 20.

Ou le Roy est d'stre respond<sup>r</sup> del mesme Issues & Profits, prises de ascun ters, queux ont deveigne al mains de divers persons, puis le title le Roy primes a ceo accrue, la chescun de eux que ont severalment prise les profits, respond<sup>r</sup> pur son temps; mes un ne respond<sup>r</sup> pur tout, Fitz. Forfeit. 18. & Stamf. de Prerog. 84.

Ou pardon de intrusion excuser Issues, & ou nemy, Vide Br. Intrusion 21.

But the Sheriff (or other Officer) ought not, at this day, to <sup>Co. 8. 169.</sup> seize any Lands into the King's hands, until after office found, &c. See hic cap. 7.

*Mean rates.*

By the Statute made 28 H. 3. c. 4. it is Ordained, That of Manors, <sup>28 Ed. 3.</sup> Cities, Boroughs, Towns, Hundreds, Franchises, and all other Lands and Tenements whereof profit doth arise from time to time through the year (as of Mills, Herbage, Toll, and Profits of Courts) every officer which shall seize such lands and tenements to the King's use,

He, and after shall make Livery thereof to the Heir (by the King's Commandment out of the Chancery) yet they shall be bound to answer to the King for the rate and portion of the time, according to the old course of the Exchequer.

Plus hic c.  
14.

*Mes mesme le Stat. done les Rents al eux que sue Livery, quant le Rent jour vient, coment que ceo weigne le prochain jour apres leur livery sue, Stamf. de Prerog. 80.*

## C A P. XII.

## Amerciaments.

**T**he Sheriff is also accomptable to the King for, and upon Process, &c. is to gather up, and to bring into the King's Exchequer, all Amerciaments and fines which shall be set or assessed (as a penalty) upon the heads of offenders against the King, in any of his Courts, Plus hic c. 14.

An Amerciament is properly a penalty Assessed upon an Offender by his equals, or by the Countrey.

**And this word Amerciament, is called in Latin Misericordia, and in English, Mercy; so as by the name and nature of this word, a Man is not to be punished so much as he or his offence deserbeth, but the Amerciament ought to be less than the offence; for it cannot be properly said, that a Man hath mercy shewed to him, if he shall pay or be charged at more than his offence deserbeth; and this is by the Common Law, which is a Law of mercy, and by the Law of reason, a principal ground of our Common Law.**

Co. 8. 59. b.  
Fitz. 75.  
h. h.

*Amerciamenti.*

And hereupon also it is, where two or more are to be amerced, though one joynt offence, yet their Amerciaments shall be severall, for that one of them shall not be charged or amerced for the offence or default of the other, but that they shall be all equally amerced and charged, Fitz. 75. g. h. k.

**And if there be divers demands amerced in a Plea Real, for their Non-suit, the course of the Court of Common-Pleas is to make the Estreats of the Amerciaments, severally upon them, and to deliver the same Estreats to the Clerks of the Assizes, who deliver them to the Coroners, and they use to Affaire the Amerciaments (i. e. to Assess the Sums upon every one) severally, Fitz. 75. k. 76. a.**

Vide Co. 8.  
39. b. &  
11. 43. b.

And so they use to do where there are divers Defendants amerced, Fitz. 75. i.

And those Estreats do rehearse and shew the cause of the Amerciaments, &c.

**By the Statutes of Magna Charta, cap. 14 & Westminster. 1. c. 61. Amerciaments ought to be assessed, (taxed, moderated or affaired) per Pais sc. per Pares, by the Oaths of good and lawful men of the same Vicinage or Countrey. Vide Co. Lit. 126.**

9 H. 3. 14  
3 E. 1. 6.  
Co. 8. 39.  
b. 40.

*Amerciamenti.*

But

But these Statutes are not to be intended of fines assessed by the Court upon any Offenders for any Contempt, &c. Nor to any Issues returned upon any Man, for any default of Appearance.

But they are to be understood of Amerciaments upon the Plaintiff <sup>Vid. Co. Lit. 126, 127.</sup> or Demandant, or upon the Tenant or Defendant in Actions real or personal, (as if the Plaintiff or Demandant be in suit; or if Judgment be given against the Tenant or Defendant, or upon the Plaintiff, Quia non est prosecutus, or pro falso Clamore, or the like) or upon the Mainperners, for that the principal party doth not appear, &c. in such cases the Justices never assess any Amerciament, but by the former Statutes the Amerciaments ought to be assessed per Pares; And the Court in such cases enters, Ideo in misericordia, generally without taxing or assessing any sum in certain.

And then the Clerk of the Warrants in the Common Place, doth make Sureties of these Amerciaments, and delivers them to the Clerk of the Justices within every Circuit, to deliver unto the Coroners in every County to assess, id est, to assess the Amerciaments, ut supra.

And so for Amerciaments upon Inditeiments or Presentments, for not repairing of a Bridge or High-way, or the like; such Amerciaments ought to be assessed per Pares, &c.

But Amerciaments of every Officer or Minister of Justice, must <sup>2 H. 7. 9. 2 Fitz. grants 33.</sup> be assessed by the Justices of the Court where the cause depends: And this is called an Amerciament Royal, as where the Sheriff, Coroner or other Officer of the King is amerced by the Justices for any his abuse or misdemeanor in his Office: Vide Co. 8. 40. Br. Amerce 25, 33, & 50. & Terms del Ley.

*Sur erroneous judgment done en Court baron, brief de faux judgment fuit port en le Court de Common Pleas, lou le suitors fuer' amerce, pur ceo quo ils sont Judges la, & le Amerciaments de les Suitors fuit assés per le Justices, Fitz. Amerce. 19. & liber. Intrac. tit. Faux Judgment div. 13, 14.*

*Peeres del Realm, & Evesques poient estre amerce, Co. 8. 39, 40. Br. Amercement 2. 23, 47, & 48. & Mag. Chart. c. 14.*

*Mes Peeres del Realm serra amerce per Pares, sc. per les Barons del Eschequer, ou per les Justices del Banco Regis, ou del Common Bank, lou ils sont Nonsue, Mag. Chart. c. 14.*

*Queux  
persons  
serront  
amerce,  
queux  
nemy.*

*Touts Ecclesiastical persons poient estre amerce (ibid.) & tiel amercement serra nient regard a leur lay fee, ne a leur benefices, mes selonque le Trespasse.*

*Feme covert serra amerce, Br. 9. Fitz. Amercement 14.*

*Mes Enfants ne serra amerce, pur imbecillity del Age, mes l'entre est, Ideo in misericordia, sed perdonatur quia Entans, Co. 8. 61. Br. 43. Fitz. Amercement 10, & 14. Vide Co. Lit. 126, 127.*

*Jurors*

*Juors* serra amerce, &c. Br. 30. 46. 55. 60. 68. & Co. 8. 41. & 11. 43.

*Plaintiff* ou demandant serra amerce in divers *Cases*, & pur divers *Causes*, Vide Co. 8. 60, 61. & Br. 3. 5. 7. 11. 27. & 31. & hic antea.

*Defendants* ou Tenants serra amerce in divers *Cases*, Co. 8. 61. Amercement 6. 8. & hic supra.

Ou *Pledges* ne serront Amerce, come le *Plaint* soit Non-suit; Et ou les *pledges* serra amerce, Co. 8. 61.

Ou *Mainpernors* serra amerce, & ou nemy, Co. 8. 39.

*Enquest* serra amerce pur concealment, Stat. 3. H. 7. c. 1.

*Home Summon* al *Parliament*, que absent luy mesme, serra amerce, 5 R. 2. c. 4.

*Signior* que distrein son Tenant pur un service nient due, serra amerce, 52 H. 3. c. 3.

Cestuy que prist outragious distreis, serra amerce, 52 H. 3. c. 4. hic cap. 115.

Queux  
persons  
serront  
amerce,  
queux  
nemy.

Cestuy que Attach, ou Arrest ascun deins son Liberty (que ne tein de luy) de respond sur contract, ou Trespass, &c. fait hors de leur Jurisdiction, serra amerce, 3 E. 1. c. 34.

Cestuy que approve Common, & ne leave sufficient al Commoners serra amerce, 20 H. 3. c. 4.

*Bakers* & *Brewers* que ne observe l'Assize serra amerce, 51 H. 3.

Cestuy que Eme, ou vend, per measures nient signe, &c. serra amerce, 51 H. 3.

Cestuy que deforce, &c. feme de sa Dower serra amerce, 20 H. 3. c. 1. & 13 E. 1. c. 4.

Un Ville, Hundred ou County, serra amerce pur Escape de Felon, 3 E. 1. c. 1. & 13 E. 1. c. 4.

Cl. 11. 43.

3 H. 7. c. 1.

Nota que Amercements et Fines in ascun Cases serra impose sur divers joyntment: sc. ascun foits sur un entier County; ascun foits sur un Hundred; et ascun foits sur un Ville, &c. Come pur Escape dun Murderer, &c. mes ceo est pur le incerteinty des persons, et pur infiniteneß del number, Vide Fitz. Coron. 290. 304. 316.

Auxi le Plaintiff in ascun cases poet estre divers foits amerce: sc. quant la est forsque un Plaintiff ou Demandant, & divers defendants, Co. 8. 61.

Mes nul serra Amerce, mes pur reasonable cause; Et accordant al quantity de son offence, 9 H. 3. c. 14. 3 E. 1. c. 6. P. Amerc' i. Quod

*Quel serra charg' al Amercement.*

In an Assize the Plaintiff was Non suit, when the Jury came to give up their Verdict, and was amerced, &c. and by the Opinion of Newton, the Land which the Plaintiff had the day when he found pledges, shall be chargeable to the Amerciament, but Wilby held otherwise: sc. that the Land which he then had (when he was Non-suit, or was amerced) or which the Plaintiff should afterwards have, was only chargeable: Quod nota, that the Land which the Plaintiff sold in the mean time between the Amerciament, and the Pledges found, should be discharged: 22 Ass. p. 32. Br. Amercement 37. Vide Co. Lit. 102. b. that the Land only which the party had at the time of the Amerciament assessed, shall be charged; and that shall be charged into whose hands soever it shall come.

Vide hic postea (*Return de Issues sur Furors*) sur que tiels Issues serra levy.

But Sheriffs shall not be charged with (nor accountable for) any other Amerciament, Issues or Fines, than those for which they shall have Executors or Warrant for to levy, under the Seal of the Exchequer. Neither are they to gather or levy any Amerciaments, &c. until they have received such warrant. Vide Stat. 27 E. 1. c. 2. & 42 E. 3. c. 9. Cromp. 203, 204. & 211.

And yet the Executors of the Justice of Peace are sufficient warrant to the Sheriff to levy such arising before them. Vide hic cap. 122. & 90. Plus hic c. 14.

### C A P. XIII.

#### Fines.

*Fines.*

**T**his word Fines (or à Fine) hath divers significations; As first, for an assurance or certainty of Lands, &c. 2. A Fine is a punishment certain which groweth expressly from some Statute. But to the purpose in hand, a Fine is most commonly that which is assessed or set upon an Offender in some Court of Record by the Court or Judge there as a penalty for some Contempt or Offence, and which the Offender doth give for and in satisfaction of his Offence, Default or Contempt: See Co. 8. 38. 40, 41, & 60. & Co. Lit. 126.

*Le difference perenter Amerciament, & tiel fine est, Que ceo que est asses. per le Court, sur Vic' Coroner, ou Officer del Court, est appel Amerciament (nemy un fine) Mes sur Estranger al Court pur Misdemeanors est appel fine, & nemy Amerciament, Co. 8. 40.*

*Fines pur Escape de Felons, Such Fines are uncertain, and to be assessed by the Justices, Vide hic c. 14.*

*Also*

Also if any of the King's Tenants in Capite (be it in Knights service, or otherwise) do alien without the King's licence, any part, they shall pay a Fine: 9 H. 3. 32. & 17 E. 2. 7. Stamf. de Prerog. folio 29, 30. And the King's Officer may seize the Land for the Fine, Fitz. 175. a.

*Uncore per tiel alienation sans licence, le title del Roy covient estre primerment trouve per Office, ou autrement de appeare sur Record.*

*Et nota que si tite le Roy appear in aucun manner sur Record, il est cy bon, sicome ust estre trouve per Office: Sicome si tenant le Roy alien sans licence, quel alienation appearer per un fine levy, ou per un fait inroll, ou auter matter de Record, in ceux Cases, si un auter Record serra trouve, que prover ceux ters de-estre tenus del Roy in capite, sur ceux deux Records ensemble, Proces serra fait envers le party (per un Scire facias) de vener & monstre pur que il ne payer ou serra un fine al Roy pur le alienation, 50 Ass. 2. Stamf. de Prerog. 55, 56.*

And by the Statute made 2 & 3 E. 6. c. 34. it seemeth that Sheriffs shall be accountable for all fines for Alienations and Intrusions made by the King's Tenants, &c. within their County (as well as for fines imposed upon Offenders for contempts, &c.) and upon Proses may seize the Lands for the fine.

But for such fines assessed or imposed upon Offenders, as also for the profits of the Lands forfeited to the King by his Tenants in Capite, upon the alienation without the King's licence, &c. the Sheriff is not chargeable; Nor is it safe for him to meddle to levy the same (notwithstanding any Office, or other matter of Record, found thereof) until he hath received Proses or other Warrant under the Seal of the Exchequer, to levy the same; and then when he hath so levied them, he his chargeable and accountable for the same, and may seize the Lands for the fine.

Principium finium pro Alienatione, vide Br. Alienat. 6. & 19. & Co. 2. 80. & Stamf. de Prerog. tit. Aliena. sans licence & Co. L. 43. a. b.

*Per le Common Ley, si cestuy que tient in Capite ust alien le Frank-tenement sans licence, le terre fuit forfeit. Mes ore per le Stat. 1 E. 3. c. 12. le Roy ne seisera le terre alien sans licence mes avera fine pur ceo. Stamf. de Prerog. fol. 29. & Finch. fol. 41.*

*Pur queux Alienations sans licence, le tenant fera fine, & pur queux nemy, Vide Br. Alienation per totum, Fitz. 157. & Stamf. de Prerog. tit. Aliena. sans licence.*

*Auxi per le Stat. de 32 H. 8. 1. fines pur Alienations serra pay sur Common recovery, cibien come sur fine, ou feoffment.*

*Et auxi serra pay sur Devise, ou done per volunt. Br. Aliena. 37. & Stamf. de Prerog. fol. 31.*

*Mes un Release, semble d'estre nul Alienation, & pur ceo nul fine est due al Roy sur ceo, Br. Aliena. 31.*

*Quantum serra pay al Roy, pur fine sur Alienation sans licence, &c. sc.*

Le { *Fine de aver Licence de Alien terres tenus in Capite, nest forsque le tierce part del value (del terre) per un an, le Tenth deduct, West. 81.*  
*Fine pur alination sans licence, est le value pur un an.*  
*Fines pur intrusion, est le value del terre pur un an. Br. Alienation, 29.*

*Sur tous licences de alien Spiritual terres (come Appropriations d' Esclises, &c.) le fine al Roy, est le value pur quatuor ans, West. 81.*

*Fine pur alien temporal terres in mortmain, est le value pur 5. ans ibid. Mes per Br. tit. Alienat. 29. le fine est forsque 3. ans value.*

*Et si le Alienation sans licence soit trouve per office le Roy avera les issues del terre a tempore Inquisitionis capta, & non ante. Br. Alien 29. le reason semble, pur ceo que icy le Roy nest inutile forsque nomine Districcionis.*

*Issint est lou le Widdow le Tenant le Roy serra marie sans licence le Roy. Vide Stat. Mag. Chart. c. 7. & 17 E. 2. c. 4. Fitz. Gard. 1. & Prerog. 27. Stamford de c. d. Prerog. tit. Women.*

*Sur tous licences de Marriage del Widdow le Roy, le fine est le 3. part de le value de sa Dowry, pur un An. West. 81.*

*Sur tous Pardons de tiel Widdows, que serra marry sans licence le Roy, le fine est tout le value de sa Dowry pur un An. Ibid.*

*Et l' officer le Roy (sur brief a luy direct, poit in ceux cafes seiser le terre pur le Fine, &c. Fitz. 174 c. 175. a. 225. b. & 226. c.) Et tiel brief poit estre direct al Escheator, ou al vic. Fitz. 175. a.*

#### *Fines pur Contempts & Offences.*

*Fines pur Contempts.*

*Ceux serra assesse & impose, in Court (vide hic cap. 14.) Bt nul Court que nest de record imposer Fine, Co. 8. 38, 60.*

*Et a chescun Fine, Imprisonment est incident, &c. sc. quousque le Fine soit pay, Co. 8. 59, & 11. 43.*

*In tous cafes ou chose est prohibite per ascun Stat. l' offend. serra fine, Co. 8. 60.*

*Sur chescun Inditement de maibem, ou auter trespasss ou offence, si l' offend. soit de ceo attainit, il serra pur ceo un fine al Roy, Lit. 194.*

*In chescun plee de Trespasss, ou auter action, ou l' offence est lay d'estre vi & armis, le defend. fera fine, si judgment soit done envers luy, Co. 8. 59.*

*Le Plaintiff pur double vexation serra fine, come si un sue auter in deux Courts pur mesme le cause, Co. 8. 60.*

*Pur queux causes Fines serra impose, &c. Vide plus Co. 8. 3. 8. 59, 60, & 11. 43. Br. tit. Fines pur contempts per totum. Crompt. de pace, 159.*

*Ou le fine serra fait al value del terre del Offender, Br. Fine pur Cont' 42. Fitz. Paine 2, 3.*

Justices of Peace shall deliver to the Sheriff Escheats indented thereby to levy the Fines and Amerciaments assessed befoze them, St. 14 R. 2. 11.

All Fines and Amerciaments, assessed or imposed by the Commissioners of Sewers, upon any Offender, shall be to the use and behoof of the King, by the Statute 23 Hen 8. cap. 5. But since the Commission for Norfolk and Suffolk are excepted, by the Statute made, 7 Jac. cap. 20.

And by the Statute 13 Eliz. cap. 9. The Clerk appointed for any Commission of Sewers, shall yearly Escheat all the Issues, Fines, Penalties, Forfeitures and Amerciaments, that shall be answerable to the King, &c. And the same Escheats he shall yearly deliver into the Exchequer, &c. and from thence Process shall go out to the Sheriff for the levying thereof.

Also the King's Justices, the Steward of the King's House, the Clerk of the Market, and the Aulnager, shall yearly deliver into the Exchequer their Escheats of Fines and Amerciaments, &c. Vide Rastal Escheats, div. 2. Co. 8. 61. Plus hic cap. 90, & 14.

## C A P. XIV.

## Forfeitures.

Stat. 33 H.  
8. 8c.  
Vide Co.  
Lit. 13.

**T**he Sheriff, &c. ex Officio may seize to the King's use the Profits of Lands of persons attainted for Treason or Felony, &c. and also their Goods, and is to account for the same in the Exchequer, Vide 22 Aff. 96. Fitz. Coro. 308, 332, & 356. Forfeiture.

Co. 7. 34. b.  
Flo. 237. b.

Now every offender being lawfully attainted or convicted of High Treason (by verdict, confession or Outlawry) shall forfeit to the King for ever all such Lands, Tenements and Hereditaments, and Annuities which he shall have in his own right, in use or possession, of any Estate of Inheritance, at the time of such Treason committed, or at any time after of whomsoever the Lands are holden, 25 E. 3. c. 2. because it is a Royal Escheat, 5 E. 6. c. 11. P. Forf. 2. Co. 3. 10. vide Stamf. 187, 189, & Stat. 23 H. 8. c. 20. Stamf. 53. And his Wife shall forfeit her Dower, Co. Lit. 37. Pur Treason.

And yet in divers cases of High Treason there shall be no Corruption of Blood, nor any forfeiture of Dower, See 5 Eliz. c. 1. 11, & 14, & 18 Eliz. cap. 1.

Also offenders convicted of High Treason shall forfeit all their Goods and Chattels (to the King) as well real as personal, moveable and unmoveable, their Corn growing, and all their Debts due to them: so all such Goods, &c. as they shall have at the time of their attainder; but not those which the offender had sold or given away befoze.

He which hath an Estate in Lands, &c. but for the Term of Life or Years, shall forfeit only his Estate or Term.

*Misprison.*

For misprison of Treason the offender shall forfeit to the King the Profits of his Lands, &c. during his Life, and all his Goods and Chattels for ever. *Stamf. 38.*

*Præmunire.*

In case of Præmunire, the Offender shall forfeit all his Fe-simple Lands, &c. for ever; and the Profits of his entailed Lands, &c. during his Life; and all his Goods and Chattels for ever. See my Country Justice.

*Felony.*

For Felony the King is not to have the Elcheat, except the Lands be holden of him; but the words of the Statute de Prerog. Regis c. 6. are; The King shall have the Profits. (by the space of one year and a day) of the Feehold Lands, &c. of Felons, which they held of other Lords, and which be Condemned, or which be fugitives; And the King shall have the mean Profits from the time of the Felony committed, until an office found, &c. and the year and day next after, *Vide Stamf. 49. a. Fitz. Coron. 290. & 49 E. 3. fol. 11.*

And yet Mr. Fitz. saith, That the King is to have all the Profits of their Lands, for the year and day next after the attainder of the Felon, *Fitz. 144 k.* And that if a Stranger shall enter upon the Lands, within the year and a day, that Stranger who took such Profits shall be therefore answerable to the King, *Fitz. 144. k. vide hic cap. 7.*

*Mes quant al wast, & auxi al Ann. & Jour le Seignior de que le ters sont tenuz poet eslier pur vner al Roy, &c. & fair fine pur tout manner de wast, & forfeiture al Roy, & le fine est le greinder pur cel cause, Vide Stamf. 48, 49.*

If the Husband be attainted of Felony, the King shall have the year, day and wast, of his Wives Land, *Fitz. Coron. 327.*

A felon obtains his Pardon, yet the King shall have Annum, diem, & vastum, *Fitz. Coron. 308.*

The King shall have Annum, diem, & vastum, of Lands in Anc. Demesne, *Fitz. Cor. 310. Vide plus ou Roy aver An. et wast. Samf. 49, 50.*

If the felon held his Fe-simple Lands of the King immediately, and be attainted, the King shall have his Lands for ever.

For petty Treason or Felony, if the Offender hath but an Estate Tail in his Lands (or but for Life, Dowry or Courtesie) the King shall have the Profits of the Lands during such Offender's Life; of whomsoever the Lands be holden.

In case of Felony (be it in petty Treason or other Felony) the Lands purchased, or descended after the attainder shall be forfeited, *48 E. 3. 2. b. Finch. fol. 71.*

But

But in Cases of Heresie, Conjuratiō, Witchcraft, Sodomy, &c. there shall be no forfeiture of Lands, &c. for that the Offences be Spiritual, 1 Jac. c. 12. Finch. 71.

Where the person attainted is seized in the right of his Wife, the King shall have the Issues during the life of the Husband, Fitz. Coron. 327.

And in these Cases the King shall have the forfeiture of the Lands, from the time of the Offence, Finch. 206. 30 H. 6. 5. Dav. 47.

Leases for life shall be forfeit to the King, upon an attainder for Treason or Felony.

Co. 3. 10.  
Stamf.  
188. a.

Sometimes he that is attainted of High Treason, Petty Treason, or Felony, shall also forfeit such Lands whereof he neither hath possession, reversion or remainder, but only a title or right, or cause of Action: As if a man be disseised of Lands, and the disseise committeth High Treason, after an Office found thereof, the King may seize those Lands as forfeited and escheated to him: And if the disseise be attainted of Petty Treason or Felony, the King shall have the profits thereof by the space of a year and a day, and then the Lord of the Fee may enter, &c.

By the attainder of the Husband for Petty Treason the Wife shall be barred of her Dowry; but otherwise it is, where the Husband is attainted of Murder or other Felony, Co. Lit. 73.

Stamf. 188

Also things in Action, sc. Debts due by Obligation, Statute, or Recognizance, and such like are forfeited to the King by Attainder or Outlawry, Co. 3. 23.

Ibid.

Also Debts due upon a simple contract, or without specialty, shall be forfeited to the King, Co. 4. 95.

For the Goods and Chattels of Felons, it cometh by Mr. Glanvil, that in his time, for Theft only, the Sheriff should have had the Felons Goods which were forfeited, and that to his own use, and not to the King's. Howbeit the Statute de Prærog. Regis c. 16. giveth now all Felons Goods to the King, without any exception (Stamf. de Prærog. fol. 45.) the words of which Statute be thus. Rex Habebit Omnia Catalla Felonum, Dampnatorum & Fugitivorum, &c. And under this word Catalla be comprehended Leases for Term of Years, the Issues and Profits of Lands and Tenements, Corn growing, Debts due by Obligation, or upon account, Goods wrongfully taken from the Felon, and Stollen Goods, &c. Vide Stamf. ibid. & 188. b.

Felons condemned or attainted shall forfeit their Goods, although they obtain their Pardon; as where one kills another Se defendendo, or by mis-adventure, Fitz. Coron. 116. 302.

Sometimes the King shall have the Goods of Felons although they be not attainted of the Felony; As if a Man be Arrested for Felony, and makes resistance or flyeth and so is killed, here he shall forfeit his Goods, Fitz. Coron. 290, & 312. tamen vide Stat. 34 E. 3. cap. 12. & Quære.

Also

And seld de se shall forfeit his Goods, and yet was never attainted.

He that killeth himself in his own Defence; or by Mis-adventure shall forfeit his Goods; but not his Lands.

He that being pursued for Felony, flyeth for it, forfeiteth his Goods for flying, though he return and be tried, and found Not-guilty.

But note, That always when any forfeiture is of any felon's Goods, it ought to appear of Record, Co. 5. 110.

An Obligation is made to two, or two be possessed of a Horse, Ox, or other entire Chattel personal, and the one of them is attainted, the King shall have the whole Debt due upon the Obligation, as also the Horse, &c. for in such entire Duties or Chattels the King is to have no partner, Flo. 323. b. 343. a.

If the Wife killeth her Husband, she thereby forfeiteth the Goods of her Husband, Fitz. Coron. 423.

And in these and all other forfeitures, the Town is chargeable with the Goods, and therefore they may seize them, wheresoever they be, 22 Ass. pl. 8. Finch. 207.

And yet if a Distress be lawfully taken for Rent reserved upon a Lease, or that Goods be pawned, &c. if afterwards the owner of such Distresses or Goods be attainted of Felony, the King shall not have the Distress, nor the Goods pawned, without paying or satisfying the Party that distrained, or him to whom the Goods were pawned, 13 R. 2. Br. Pledg. 31.

*Outlawed.*

If a Man be Outlawed for Treason or Felony, he shall forfeit all his Lands, &c. and all his Goods, Fitz. Forfeiture 3 Br. 6. pea though he yields his Body upon the Exigent, yet he shall forfeit his Goods.

*Clerk convicted.*

A Clerk convicted (sc. who hath his Clergy given him before that Judgment is given upon him for the Felony) shall forfeit none of his Goods, Fitz. Coron. 91. Br. Forfeiture 5, & 103. neither shall the King have the pear and bay, and waif of their Lands, for that the Offender is not attainted, Fitz. Coron. 332. 393. Abr. d'Ass. 79 but by others they shall forfeit their Goods, Br. forf. 11. 65, & 113. Stams. de Prerog. 46. Baron. 45.

A Clerk attaint (sc. who hath his Clergy given him after Judgment) shall forfeit all his Lands, Goods and Chattels, Br. forf. 65. & 103.

*Tenants del  
Evesques.*

Also the King shall have the Elcheats of Lands of the Freeholders of Archbishops and Bishops, when such Tenants be attainted for Felony in the time of Vacation, whilst their Temporalities are in the King's hands; to give at his pleasure, 17 E. 2. c. 14.

This reacheth to no other elcheats, but such as grow upon offences, and if the offence were done whilst the lands were in the Kings hands  
although

although the party were not attainted thereof until such time as the Lands be out of the King's hands, yet the King shall have the Escheat by force of this Statute; Stamf. 41.

If any Murderer or other Felon shall escape, the Town or County shall be amerced or fined therefore, by the Statutes 3 Ed. 1. c. 9. & 3 H. 7. c. 1. sc. The Town where the Murder or Felony was done; and if the Town be not sufficient, then the amercement shall be laid and levied upon the Hundred, and if the Hundred be not sufficient, then it shall be levied upon the County. *Escape de felon.*

But the Sheriff (nor any other) are not to take or levy any thing (sc. any fine of any Town, nor of any Gaoler or other person) for the escape of any Felon, before it be adjudged, or assessed by the Justices in Eyre, Stat. Westm. 1. c. 3.

And now that there be no Justices in Eyre, it shall be assessed by the Justices of the King's Bench, or by the Justices of Gaol-delivery, or of Oyer and Terminer, or else by the Justices of Peace (sc. in Cases where the Justices of Peace have power to enquire thereof) Regist. folio 184. 21 Aff. 12. 27 Aff. 1. 2. 27. 1 R. 3. c. 3. & 19 H. 7. folio 10.

*Nota quant escape est fait, si soit sur Record, les Judges sans plus volent mitter le fine, mes si soit forsque per matter en fait, donque le Jury doivent Trouver & present ceo devant les Justices, & puis les Justices assesser ceo. Et a cel purpose tous Prisoners sont ou per matter de Record, ou per matter en fait: per matter de Record, quant un present in Court est commit al Prison per le Court, la si le Gaoler ou Gardian n'ad luy semper prist, il est escape sans autre enquiry (sinon il ad reasonable excuse) & les Judges voile mitter le fine maintenant, ut supra.*

*Per matter en fait lou home est prisoner, quant il est arrest per le vic. Bayliff, Constable ou autre, & escape, la il ne respond. al escape, devant que le escape soit present devant les Justices, &c. ut super.*

*Et in ambideux ceux cases, soit l'escape sur Record, ou per matter en fait, les fines assess per les Justices, serra estreat per ceux in Leschequer, & sur ceo proces isser al vic. de levier ceo.*

*Si le vic. pur escape de felon prist ou levy ascun chose, devant que l'escape soit adjuge & assesse ut super, il payer al party tant que il aver prise, & auxi al Roy, Westm. 1. c. 3.*

Before this Statute, if there had ben any such escape, the Sheriff himself would assess the fines, which many times were unreasonable, and therefore this Statute of Westm. 1. was made, ordaining that such fines should be adjudged by the Justices, as aforesaid.

*Stamf. 150.* A man arrested for a Trespass, escapeth, or is rescued by a stranger, these are finable, &c. Stamf. 31. e.

If a Man stand mute in an appeal, or upon an inditement of felony, he shall forfeit his goods, Br. forf. 11. Pl. 262. But he shall forfeit no Lands, except his offence be Treason, Bacon v. 45. *Mutus.*

So if a man that is arraigned for Felony shall challenge above 35. without cause, *Plo. 262. Stamf. de Prerog. fol. 49. saith, If he challenge above the number of two Enquestis.*

So if a man be found guilty of Felony, and then hath his Clergy: And in these three former cases the Offender shall forfeit his Goods, but no Lands, except the offence be Treason; for that they refuse the trial or judgment of the Law: *See Plo. 262. b. & Co. Lit. 391.*

*Sacerdos.*

*Si Sacerdos vel Rector fecerit feloniam, il forfeitera tous ses biens, & dismes receives, nisi fuerint in Sanctuario. Fitz. Coron. 245, & 413. 8 Ed. 6. 2. & 22 Ed. 3.* *Stamf. 188.*

*Si Parson soit utlage, ou autrement ad forfeit ses biens, l'officer poet seiser ses biens, & a cel purpose l'officer poet enter sur les possessions Ecclesiastical de quel Parson, ou in le Eglise ou Sanctuary, 27 All. Pl. 66.*

*Pris. Sanct.*

If a man flies to the Church for Felony, his goods are forfeited presently, and the profits of his Lands: And if he abjures before the Coronor for Felony, he shall forfeit his lands and goods: *Br. for. 116. 121. Stamf. 123. a. 123. a. otherwise, where a man abjures for a trespass or other offence, not being felony, Stamf. 123. a.*

*Heretic.*

If a man abjures for Heresy, he shall not forfeit his goods: but if he be convicted and delivered to the lay power, &c. he shall forfeit his goods, but he shall forfeit no lands, except he be put to execution. Quare of this last, for by the Common Law there was no such forfeiture of lands; and the Statute of 2 H. 5. c. 7. which gave the forfeiture of lands in case of Heresy, is now repealed by the Statute of 1 Ed. 6. c. 12. & 1 Eliz. c. 1. Vide Finch. fol. 71. *Do. for & Stud. 1152.*

*Recogn.  
Fines.*

Also the King shall have all amerciaments, fines, issues and all forfeitures of Recognizances lost or forfeited, &c. before any of his Judges or Justices in any of their Courts or Sessions; but these must be first created into the Exchequer, and from thence process must be awarded to the Sheriff to levy the same to the King's use, &c.

Also the Courts of Exchequer, of Wards and of the Duchy have Authority to let amerciaments, fines and penalties upon parties, officers and other persons, for their defaults, contempts, negligences or misdemeanors; as also to take Recognizances for the King, &c. All which amerciaments, fines, penalties and forfeitures of such Recognizances shall be to the King, &c. 33 H. 8. c. 39.

*Amerciaments.*

Also the King shall have all amerciaments, fines, forfeitures and issues forfeited in any of the Sheriff's Courts, &c. in their Corms, County Courts or Hundreds within the twelve Shires of Wales, and the Sheriffs of Wales shall account for the same, 34 H. 8. p. Wales 43.

But otherwise it is of other Sheriffs within England: *See 6 H. 7. fol. 2. 3. & hic tit. Sheriffs Fees.*

*Goods attached.*

Goods attached by the Sheriff, &c. if the party so attached (by his goods) appear not at his day, &c. the goods attached are forfeit to the King, and the Sheriff shall be answerable for the value thereof: *See hic tit. Attachment.* *Br. for 134.*

*Issues*

Issues returned upon Juroꝝ (they making default of appearance, &c.) shall be lost and forfeited to the King, and Levied by the Sheriff to the King's use; upon Estreats thereof made out of the Exchequer, &c.

And so of Issues returned upon the Defendant.

The petty Jury attainted in a Writ of attain, shall forfeit to the King all their Goods, and the Profits of their Lands during their Lives, or until they have made a fine with the King: Br. attain. 99. Fitz. 396. Nat. brev. 113. where also you may see the whole Judgment given against such Offenders.

*Attain.*

If any person shall strike, or but draw any weapon to strike any Justice sitting in place of Judgment; or to strike any Juroꝝ or other person in the presence of the said Justices, or shall make any Affray in their presence, such Offender shall forfeit to the King all his Goods and the Profits of his Lands during his Life: So it is of any person which shall rescue any such offender, Vide Fitz. Judgment, 174. & Stamf.

*Affray.*

If any person shall strike another in Westminster-Hall, sitting of the King's Courts there, he shall forfeit to the King his Goods for ever, and the profits of his Lands, during his life, Fitz. Cor. 280. Dyer 188.

If any person shall ride, or go armed offensively in affray of the King's people, the Sheriff may seize and take away their armour and weapons, and appraise them, and shall answer them to the King as Goods forfeited to him: See my Country Justice tit. Armour.

*Armour.*

If any person shall wear any privy armour in the King's Palace, or in Westminster-Hall, he shall forfeit his armour to the King, Fitz. Forf. 22.

Note, That Goods and Chattels shall be forfeited in divers cases, as

1. In Treason, } the party being } Judgment of Death given
2. In Felony, } Attainted by } upon him, or
3. In Premunire, } Out-Lawry.
4. In killing himself.
5. For flying for Felony, although not guilty of the fact.
6. For standing mute, or refusing to be tried by the Country.
7. By Conviction of Felony, sc. by Verdict without Judgment,
8. For Petty Larceny.

In Cases of Out-Lawry.

9. For going beyond the Sea without Licence.
10. For challenging above two Enquests, upon Arraignment for Felony.
11. For Abjuration for Felony.
12. For Heresie, if he be Convict and delivered to the Lay-power.
13. Goods Attached, if the party Attached appeareth not at his day, &c.
14. The Petty Jury Attainted in a Writ of Attaint.
15. Striking, &c. of a Judge or Juroꝝ, in the presence of the Judge.

16. *Armour woyn offensibely.*

Regules.

*Nota que home ne forfeitera ascun terres que il ad en auter droit, come en droit* Sta. 187.  
*sa feme, ou en droit sa Esglise, mes solement les terres que il ad en son droit b. m<sup>e</sup> f<sup>e</sup>*  
*demefne.*

*Home endite de Felony, ad feme inheretrix, le Roy avera les issues del terre le* Fitz. forf.  
*feme, &c. Issint si le baron est fugitive, Roy avera l'issues, tanque le baron* 16. & Co-  
*soit mort ou attaint, Vide Fitz. Cor. 332. 356.* ron. 39.

*Home occist auter, & obtain Pardon, & uncore ses biens fueront seises come* Fitz. Coron  
*forfeit al Roy, & auxy l'anjour & wast in ses terres, & le vic fuit charge de* 308.  
*tout.*

*Home ad Jewel in gage pour x. li. & celsuy que mitter ceo in gage est at-*  
*taint, le Roy navera le Jewel sans paier le x. li. car prerogative le Roy ne*  
*voiet prejudicer auter, Plow. 487.*

*Et issint est de distres prise, &c. Plow. 487. b.*

*Auxy le vic. est chargeable ove les biens del Felon, hic cap. 6. & Stamf.*  
*ibid.*

Seize Felons.  
Goods.

*Note, That after a man is Indited of Felony (by the Statute* 25 E. 3.  
*made Anno 24 E. 3 c. 14.) a Capias shall go out to the Sheriff, com-*  
*manding him to attach the Body of the Felon: And if the Sheriff*  
*return in the said Writ, that the Body is not found, another Writ of*  
*Capias shall be incontinently made returnable at thre weeks after,*  
*and in the same Writ it shall be comprised that the Sheriff shall seize*  
*his Goods, and safely keep them till the day of the Writ returned:*  
*And if the Sheriff return that the body is not found, and the In-*  
*dite cometh not in, the Exigent shall be awarded, and the Goods*  
*shall be forfeit: But if he come and yield himself, or be taken by*  
*the Sheriff (or other Minister) befoze the return of the second Ca-*  
*pias, then the Goods and Chattels of the Indite shall be saved.*

*By the Statute made Anno 1 R. 3. no Sheriff (or other Officer)* 1 R. 3. c. 3.  
*ought to take or seize the Goods of any person, arrested, imprisoned,* P. Sher. 24.  
*or indited for Felony, or for suspicion thereof, befoze the same person* Br. forf. 40.  
*be duly convicted or attainted of the same Felony (sc. either by Trial,*  
*Confession, or Outlary and Judgment thereupon given;) or that*  
*the same Goods be otherwise lawfully forfeited, upon pain to for-*  
*feit the double value of those Goods so taken, to the party grieved.*

*Howbeit this Statute extendeth not to any other, but to such as*  
*be in Prison: Also this Statute extendeth not to any Lands, but*  
*only to Goods, Stamf. de Prerog. fol. 48.*

*M<sup>r</sup>. Bracton, lib. 3. tit. de Coron. saith thus, Prisonees imprisonati*  
*antequam convicti fuerint, de terris suis disseisiri non debent, nec de re-*  
*bus suis quibuscunque spoliari, sed dum fuerint in prisona debent de pro-*  
*prio suo in omnibus sustentari, donec per Judicium deliberati fuerint,*  
*vel Condemnati.*

*And in another place of the same Book, cap. 18. he saith thus,*  
*Qui pro Crimine vel Felonia magna (sicut pro morte hominis) captus*  
*fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari de*  
*bonis*

bonis suis, nec de terris suis disseisiri, sed debet inde sustentari donec de Crimine sibi imposito se defenderit, vel Convictus fuerit; quia ante convictionem nihil forisfacit, &c.

And yet lest the Goods should be disorderly wasted, imbezelled or sold away, the Sheriff, &c. (before the attainder of the Felon, so soon as he is taken) may take Sureties that the Goods be not imbezelled, &c. (sc. may cause the Owner, or some of his Friends to find Surety) and for want of Sureties, the Sheriff, or other his Officers may seize them, and cause them to be prailed and valued, and then may deliver them to the Town (sc. to some of the neighbours of the Town where the Goods were) by them safely to be kept, until the offender be convicted or acquitted. And by the Opinion of Mr. Brook tit. Forf. 44. this Order ought to be observed concerning the Goods of every one which committeth Felony, until he be attainted: But yet the Felon must have reasonable maintenance out of his Goods for himself and his family, in the mean time: And according hereunto there is a Writ in the Register to be directed to the Sheriff, videlicet, Quod tenementa & bona taliter capta, videantur & imbrevantur, & salvo custodiantur per ballivum ipsius capti, qui securitatem Regi inveniet ei respondend' si, &c. (Salvis inde ipsi capto & familiae suae, necessariis quamdiu fuerit in prisona.) So that the Felon must have maintenance of his Goods for him and his family, until he be convicted, and then that which doth remain shall be to the King, Bracton, lib. 3. cap. 18. & Stamf. de Prærog. fol. 48. a. De illis autem qui in fuga sunt, aliter erit. Bracton, ibidem.

43 E. 21.  
Br. forf. 7.  
10. 44.  
Stamf. de  
Prærog. 47.  
Ba. v. 48.

Pla. 68.

So then this difference is to be observed in the seizing of a Felon's goods, viz. where the goods be forfeited before the Felon tried (as where one is found guilty before the Coroner of the death of another; or where it is found before the Coroner, that one did fly for a Felony) in such cases the goods shall be presently seized upon the forfeiture of them, though there be no conviction of the Felon; and upon such forfeiture the goods are presently the King's and the Felon is to have no maintenance out of them, &c.

But upon an Indictment, &c. where the goods be not forfeited until the Felony tried, then they shall not be seized, or removed out of his house until the Felon be convicted, but yet there the Sheriff, &c. may take Sureties that the goods be not imbezelled or disorderly wasted, as aforesaid, and for want of Sureties may deliver them to the Town, &c. And note, that if goods so delivered to the Town, be impaired in their custody, the Sheriff shall be charged to levy of the same Town the value of the loss, &c. (as it sameth) F. Coroa. 355.

And Mr. Stamford giveth it for a general Rule, that the Township where the goods of Felons or fugitives be found, shall always make answer to the King of them, Stamf. de Prærog. 47.

If one be indicted super visum corporis, of the death of a Man, before the Coroner, all his goods are forfeit presently, although he shall be acquitted after (otherwise where one is indicted before other Justices) vide Abr. d'Ass. 71. And yet by others, there is no forfeiture without the flying be found. Vide Fitz. Forf. 32. & Stamf. de Prærog. 46.

Where one is found guilty of Homicide before the Coroner, the Coroner may seize the Goods, and deliver them to the Town, &c. But upon a fugam fecit found before the Coroner, the Sheriff may seize the Goods, and deliver them to the Town, &c. Now we call that a fugam fecit, where any fly for fear, when any Treason or Felony is committed by any, Finch.

*Fugitives.*

Now, if a Man shall fly for Felony, the Sheriff, &c. is to seize all his Goods and Chattels, real and personal, as also the profits of his Lands to the King's Use.

And the Sheriff may retain such Goods and Chattels, and the Issues and Profits of such Lands, to the King's Use, until such time as the fugitive shall be attainted or acquitted; for that such his flying maketh a great presumption against him. *Stamf. de Prerog. 45, 46. Vide Fitz. Coron. 289, 290, & 356. & Fitz. Forf. 32.*

He that flyeth for Petty Larceny, shall forfeit his Goods, *Fitz. Coron. 406. tamen vide Stamf. 47. & Quare.*

An Accessary before the Felony committed, shall forfeit his Goods, upon a fugam fecit found, &c. But otherwise of an Accessary after the felony committed, *4 H. 7. fol. 18. Br. Coron. 199 & Forfeiture, 52.*

But yet the Goods, &c. of a fugitive, are not forfeit until the flying for Felony be lawfully found of Record; either before the Coroner upon an inditement, *super visum corporis*, in case of the death of a man; or by verdict upon his acquittal (for altho' he be found Not guilty upon his Trial, yet he shall forfeit his Goods for his flying: *Quia fatetur facinus, qui iudicium fugit*, and the Law will admit no proof against this presumption.) And altho' the Jury which tries him, shall find him Not guilty, and further that he did not fly: Yet the Goods are forfeit by force of the finding of his flying before the Coroner, *Vide Stamf. de Prerog. 46, & Fitz. Forfeiture, 29, & 35.*

*Co. 5. 109.  
Flo. 26. 2.  
Co. Lit. 373.*

*Fugitives.*

And if a Felon be arrested for any manner of Felony, and as he is leading to a Justice of Peace to be examined, or towards the Gaol, he flyeth, and those which pursue him cannot take him again without killing of him, by reason whereof they do kill him: If all this matter, and the flying be presented before the Coroner, or before any other who hath authority to enquire of felonies, the party so slain shall forfeit all his Goods and Chattels (i. e. all such as he had at the time of the felony committed: *Fitz. Coron. 290.*

*Co. 5. 109.*

And in these and other like cases presently after the flying found by Enquest before the Coroner, the Sheriff is to seize all the Goods, and the Profits of the Lands of such Offenders. *See Fitz. Forf. 32. & Stamf. 47. b.*

*Goods.*

And the custody of the Goods of these which be convicted of Felony or which be fugitives, after they be forfeited, doth belong to the Town where those Goods are, or where the Felon doth dwell: And therefore upon a Fugam fecit presented before the Coroner, the Goods ought presently to be seized by the Sheriff or his Officers, and praised by an Enquest, and the Sheriff shall cause the Appraisement to be enrolled in the Coroners Roll, and the Goods shall be delivered

*Stamf. de  
Prerog. 47.*

bered to the Town to answer to the King for them: And tho' the Goods be not delivered to the Town, yet if the Goods were in the Felons House or possession at the time of his conviction or flying, the Town shall answer for them: Fitz. Coron. 366. Stamf. 192.

Note, That under this word Goods (Catalla) be comprehended Leases for years; Lands extended for Debt upon judgment given in any Court of Record, or upon any Statute Merchant, Staple, Recog. or Elegit; The Wardship of Body and Lands; the Issues of Lands and Tenements; Corn growing; Debts due by Obligation, Statutes or Recog. or due upon an account, or upon a simple contract; pea Goods stolen, and Goods wrongfully taken from the felon.

Fitz. Coron. 390. Stamf. 194. But for the Issues and Profits of Felons and Fugitives Lands, *Lands.* the Sheriff is, and was always chargeable therewith according to the extent thereof, and not any Town. And the Sheriff presently after a Fugam fecit found before the Coroners shall seize them into the King's hands by word only, without taking any Enquest, Stamf. de P.ærog. 47.

Also he that flyeth for Felony, shall not forfeit the Goods or Profits of his Lands, which he had at the time of the Felony or flying; but those and such only which he had at the time of the indictment or acquittal, Co. 5. 109 Fitz. Coron. 295, & 344.

Co. 5. 110. & 111. If process be awarded upon an appeal or inditement of felony against any person who doth absent himself and not appear, until the Exigent shall be awarded against him, by this absenteing himself (which in Law is a flying) he shall forfeit all his Goods, which he had at the time of the Exigent awarded, although he yield himself upon the Exigent, and that after he be acquit of the felony; but if he were in Prison or beyond the Sea, &c. at the time of the Exigent awarded, then he shall not forfeit his Goods, &c. *See postea, outlaw.* See Fitz. Forf. 19, & 31.

Note, That he that is Outlawed for Treason or Felony, shall forfeit those Goods which he had at the time of the Exigent awarded, and not such as he had before, and hath aliened.

Note, also a difference touching the Profits of the Lands of fugitives sc. where the flying is presented before the Coroner, and where the flying is found by verdict upon an acquittal; for upon a flying presented before the Coroner, the Offender shall forfeit the profits of his Lands until his death, or until he be acquit, or until he hath purchased the King's pardon: But upon a flying found by verdict upon acquittal, he shall forfeit no Profits or Issues of his Lands, for by his acquittal his Lands are discharged, and consequently the profits thereof: Fitz. Co. 344.

Where one which passeth out of the Realm without the King's Licence, or contrary to the King's Proclamation, or having Licence, shall not return upon the King's command, &c. he shall forfeit his Lands and Goods, Vide Fitz. 85. a. c. & Dyer 128.

If a man shall kill himself, he shall forfeit to the King all his Goods *Felo de se.* and Chattels, real and personal, and his Debts, &c. And the Sheriff and his Officers are to seize them to the King's use, but shall not forfeit

forfeit his Lands, Flo. 258. And this forfeiture shall have Relation to the time of the Act done in his life time, which was the cause of his death, Finch. 75.

If an Infant, a Man non compos mentis, or a lunatic killeth himself, they shall forfeit nothing: See more in my Country Justice, tit. Felo de se.

## C A P. XV.

There be other kinds of Forfeitures of Goods to the King, as  
*bona waiviata*, *Esstrays*, *bona Confiscata*,  
*Deodanda*, &c.

*Bona waiviata* **B**ona waiviata or derelicta, are where a felon hath stoln Goods, Co. 5. 10. and upon Hue and Cry, or other Pursuit after him, he waiveth the Goods; or where a felon for fear to be apprehended, (thinking that pursuit is made after him, or otherwise to ease himself of his carriage) he having the Goods with him in his possession, flieth and waiveth, casteth away, or goeth from the Goods: In these cases the Goods are forfeit to the King by the Common Law of this Realm, And the Sheriff, &c. is to seize them to the King's use: And any other Officer or Person in the right of the King, and to the use of the King, may seize the Goods so waived.

And yet the party robbed, or owner of the Goods, shall afterwards be restored to his Goods again: sc. if he maketh fresh Suit, and shall do all his endeavour to take the Thief, whether he be taken or no; and this is by the Common Law: or without fresh Suit, &c. if he do cause the felon to be thereof attainted, or that the party robbed shall but procure another to give evidence upon the Indictment, Vide Finch. 75, &c. and this is by force of the Statute made, 21 H. 8. cap. 11. Br. Estray 2, & 14.

But if the felon had not the Goods with or about him when he fled (having peradventure hid them, or left them in his own House, or in the House of any other, or in the Custody of any other, or left them within any Mans Mans, or put, hid, or bestowed them in the ground, or in any other secret place, and then was fled:) These Goods are not forfeit, neither shall they be said to be waived Goods in Law, but that the owner may take them again when he will, without either fresh Suit made after the felon; or without causing him to be Attainted, or other prosecuting of him (as it cometh) and the Sheriff, nor any other Officer are not to seize or meddle with any such Goods, &c. Co. Ibid.

Note, that there can be no waif (properly) but of Goods that were stoln: And yet if upon Hue and Cry levied, a Man that hath committed no Felony, doth leave his own Goods and flieth, those goods (by some opinions) may be seized to the King's use for a waif. See 29 E. 3. f. 29. And so seems the opinion of Lacon in 12 E. 4. f. 5. But by the opinion of Needh. in 12 Ed. 4. and of Master Brook, tit. Estray 2. (agreeing

(agreeing with the Opinion of Sir Edw. Coke, here before) a waif is only that which is stoln, and after waived and lest in flying; and Catalla felonum, are the proper Goods of the felon, and the one may be seized and forfeited by the flying, but not the other: Br. Estray 2. 6. but a Man waiving his own Goods, they are not forfeit, but that he may have and take them again when he will.

Home poet prescribe d'aver waif, mes nemy in Catalla felonum. Br. Estray *Regule* 2. 6 & Co. 9. 27.

Biens sont emblees & waif, uncore cesty a que le property fuit, poet eux reiser 20 ans apres, si nul Officer le Roy, ou d'auter Seignior, &c. ad eux seise, Fitz. Estray 2.

Uncore per Gerrard & Catlin, ils sont forfeit al Roy per le waiver tantum sans seiser, Vide Dyer 338.

*33 R. 4. 10* Si Merchant Alien vient in cest Realm per safe conduct, & ses biens sont emblees, ceux biens ne poent estre waifs, car le Roy ad grant a luy saluum & securum, &c. tam in bonis quam in corpore, & cest un Covenant perenter le Roy & luy, per que le Roy ne poet aver les biens come waifs, & per mesme le reason le Roy ne poet granter eux al auter person, &c. Fitz. Estray 1.

*Br. & lib. 1. c. 12.* These goods waived, the Civilians call derelicta: And Master Bratton saith, Quod olim fuerunt inventoris de jure naturali, & jam efficiuntur principis de jure gentium; and he reckoneth them inter res quæ sunt nullius, &c. as Estrays and the like.

But now Kings have granted this, and such like Prerogatives unto their Subjects within their Liberties, so that Waifs and Estrays are (in many places) the Lords of the Franchise where they are found; but they must by him be caused to be cryed in Churches and Markets near about him, or else the pear and dap doth not run to the prejudice of him that hath lost them.

Nota per le Common Ley Estray serra proclaim in deux prochain Market *Estray* Villes, & deux Market jours, lun in lun ville, & lauter in lauter ville: Et sil soit claim deins l'an & jour, le owner reavera; & cesty que prist eux come estray poet eux retainer tanque il soit satisfie pur le finding, keeping & proclaiming del beast, &c. Vide Br. Estray 1. 4. & 16. Fitz. Estray 4. & Co. 5. 108. Finch. 45. & Stat. 27 H. 8. c. 7.

Et uncore semble que Estrays fuer<sup>t</sup> anciently proclaim, cy bien en Esglises come en Markets, sc. un foits en le Esglise, & deux foits in Markets, Vide Britton, fol. 26. & 39 E. 3. fol. 3.

Estray ne poet estre in tiel lieu, ou le party ad Common, Br. Estray 3. & Co. 7. 16.

*Co. 5. 58.* Biens de Infants, Feme covert, Executrix, home in Prison, & home ouster le meere, fils estreyont, & sont proclaim selonque le Ley, si nul claim eux deins le an & jour, ils tous serra lie, & tiel biens poient estre seise al oeps le Roy, &c.

*Estray est lon ascun Beest ou Cattel vient in ascun Seignior, & nul comist le owner de ceo.*

*Et nota que waived biens & estrays serra seise per l'officer le Roy al oeps le Roy; ou per le Officer ou Bailiff del Seignior, que ad tiels choses per grant le Roy, ou per Prescription al oeps le Seignior: Termes del Ley.*

One as Bayliff oꝝ Servant to the Sheriff, seized a Horse as an estray to the King's use, and proclaimed him according to Law, &c. and after the year and day sold him, and the Sheriff accounted theretoꝝ in the Exchequer, Br. Estray 4 & 5. 24 H. 6. fol. 5.

Swans may be seized as an Estray, 7 H. 6. Fitz. Barr. 6.

Swans that be unmarked and wild (being at large and abroad) the Sheriff may seize them to and foꝝ the use of the King, by his Prerogative, they being volatilia regalia, Co. 7. 16.

*Bona confiscata*

The word Confiscate (confiscare, i. conferre in fiscum) cometh from fiscus, which (as Master Minshaw saith) originally signifieth a Hamper, &c. but Metonymically, the Emperors Treasure, because it was anciently kept in Hampers; and such Goods as were forfeited to the Emperors Treasure foꝝ any offence, were bona confiscata, and so do we call those goods that are forfeited to our King's Exchequer, Hæcille.

And indeed our Law in some cases doth intitle the King to Goods that late were another persons, but lost by some default oꝝ negligence of his; yet this cannot properly be termed a forfeiture, but a confiscation of Goods. As if a man do steal divers Goods, and the owner of the Goods doth bring his appeal of Robbery against the felon, and therein doth omit oꝝ leave out any part of his said Goods that were stolen; in this case the King shall have all those Goods which were left out of the appeal; and the reason of Law is, foꝝ that by this omission oꝝ leaving out any of the Goods the felon may escape, and the appellant shall be thus punished by the loss of his Goods, foꝝ such his negligence, connivance, and concealing of the felons offence; and then in as much as the owner cannot have those Goods, the King shall have them as confiscate, according to the old Rule, quod non capit Christus, caput fiscus, *Termes del Ley.*

Co. 5. 110.  
Fitz. Cor.  
100.

So if a Man be Indicted foꝝ the felonious stealing of another Mans Goods, where in truth those Goods be his own, and the Goods be brought into the Court, and he is asked by the Court whose those Goods be, and he doth disclaim to have any property in them; by this disclaimer he shall lose the Goods, though they were his own; and though he be acquit of the felony, yet the goods by this disclaimer shall be confiscate to the King, Fitz. Coron. 255, & 368. *Termes del Ley*, Stamf. 194. and the Sheriff shall be charged with the same, Ibid.

So if goods be found in the possession of a felon which he doth disavow oꝝ disclaim to have any property therein, and after he is attainted

taunted for stealing of other Goods, but not of those; in this case the Goods which he did disavow, shall be confiscate to the King: But if he had been attainted for the stealing of those Goods, they should have been termed Goods forfeit, and not confiscate, Fitz. Forf. 24. Finch. fol. 75.

And some do hold that all Goods which are forfeited to the King's Exchequer, be bona confiscata, Minsh.

Co. 5. 110. And if A. hath the Goods of B. by bailment, or finding them, or *Faux appeal.* by other lawful means, and B. doth bring an Appeal of Robbery against A. charging him to have stolen them, or taken them feloniously, and it is found by the Jury, that the Goods were the Plaintiff's, and yet that the Defendant A. came to them lawfully, in this case B. the Plaintiff shall lose these Goods to the King, for his false and malicious Appeal; i. e. they shall be confiscate.

If a man do steal Goods at divers times from several men, and he is attainted at the Suit of one of them for the Goods stolen from him, but is not attainted at the Suit of the others, by this attainer the Felon shall forfeit to the King not only his own Goods, but also the Goods stolen from those other at whose Suit he was not attainted, although he had no property, but only a possession of those goods; for a felon hath no property in goods stolen, but the property doth always remain in the right owner, which property in this case he also forfeitereth or loseth to the King, for default of pursuing the Felon. *Par default de poursuit.*

So if a man do steal goods from another, and before his attainer he doth kill himself, he shall forfeit to the King not only his own goods, but also the goods which he hath stolen from the other: For the owner of those goods not having prosecuted and given Evidence against the Offender to attain him of Felony (either by appeal or indictment) can neither have restitution of those goods by the Common Law, nor by force of the Statute of 21 H. 8. cap. 11.

Co. 5. 110. Deodands are goods, or any other thing, which do cause or are *Deodandi.* any occasion of the death of a man by misadventure: And the Jury which do find the death of the man, must also find and appraise the Deodand, and the Coroner shall return the same in his inquisition, and in whose custody the same goods or Deodand remains: And the Sheriff shall be chargeable therewith; i. e. shall be charged to levy the price of such Deodands of the Town, though the thing were not delivered to them to keep; or the Sheriff may seize such Deodand; Vide Kel. 68. that the King's Officer may seize them presently.

*Lazarack's Case, Trin. 3 E. Car. Secund. in Banco Regis.* See the Statute de officio Coronatoris made Anno 3 E. 1. That Hozles, Oxen, Carts, or other things whereby any person shall be slain, that properly are called Deodands, they shall be praised, valued and delivered (by the Sheriff or Coroner) to the whole Township, who shall be answerable thereto.

Every Sheriff, within one month after the arrival may seize to the King's use, all the Goods and Chattels of any outlandish persons calling themselves Egyptians, that shall come into this *Goods of Egyptians.* Realm;

Realm: And may keep the one Poerty thereof to his own use, making an account to the King in the Exchequer for the other Poerty, 22 H. 8. cap. 10.

But every person that shall prove by two credible Witnesses, before the Sheriff, that any of those Goods were Craftily or Feloniously taken from him, shall be presently restored thereto, upon pain of the double value thereof, to be forfeited by the Sheriff, to the party grieved, &c.

And yet note. That after the month, the offence is made felony by the Statutes, 1 & 2 P. & Ma. c. 4. & 5 Eliz. c. 10. And then the King is to have the whole Goods of such Egyptians.

*Outlaws Goods,* Where a man is appealed, or indicted for felony or Treason, and withdrews and absents himself so long time as that an Exigent is awarded against him (sc. by the space of five Counties) this absenting himself is accounted a flying in Law, for which he shall forfeit all his Goods and the Profits of his Lands which he had the day of the Exigent awarded, or at any time after, altho' he shall be afterwards acquit of the felony or Treason, and altho' he yields himself upon the Exigent. And the Sheriff or his Officers may, ex Officio, seize them presently to the King's use. *See hic antea Fugitives, & Franchises. Stamf. de Prerog. fol. 47. Br. Relat. 16.*

*Pur Felony.* Co. 5. 110. b. Stamf. 184.

Note, That he which is outlawed for felony, shall forfeit his Lands and the King shall have Annum, diem & vassum, &c. But for outlary in any personal Action he shall forfeit no Land, but only the profits of his Lands, Br. Forf. 75. & utlag. 26. and all his Goods, Chattels, and personal Estate; sc. his Corn sown upon the Ground, Cattel, Implements of Household, and Goods moveable whatsoever.

*Le reason que utlary in trespass, ou autre personal action n'est forfeiture del terre, come utlary pur felony est pur ceo que coment, le Non appareance est le cause del utlary en ambideux cases, uncore le force del utlary serra esteem accordant al heinousness del Offence, que est le principal cause & foundation del Proces, Finch. 4.*

But the party outlawed doth not forfeit his goods, (neither may the King's Officer, &c. seize them) before the time that the outlary appeareth of Record, sc. either by the Sheriffs Return of the Exigent, or that the outlary be removed by a Certiorari; or be certified by the Sheriff, sur Testatum est, Fitz. 116. Co. Lit. 288. b.

*Nota que la sont several briefs de capias utlag. l'un tantum de apprehend le party, l'autre de prender le party, & Inquir. de bonis. Vide Register, fol. 138. b. inter Judicial fol. 24. a.*

*In action personal.*

The Sheriff (and his Officers) may ex Officio seize to the King's use, all the goods and chattels real and personal, of all such persons as shall be outlawed in any personal action: sc. all such goods as they had at the time of the outlary pronounced; And they may take for the King all the profits of the Lands in the possession of the party outlawed, sc. they may mow or sever and take all the corn and grass growing, and may take the seed and herbage of the grounds, &c. (as they arise or grow of themselves) and the rents of his Farmors, as the

Mo. 541. b.  
5 H. 7. 16.  
21 H. 7. 7.

the party outlawed might; But they may not meddle with the possession of the lands, to plough, sow, graze, or let the same, &c. And if the party outlawed shall make a scotment of his land, the King shall have no more the profits thereof, but the scotter shall have the same, for that the King hath not any possession of the land, altho' he hath the profits thereof. See Br. Forf. 24. 26. & 30. & Br. Issues 9. 10. Plo. 541. b. & Stamf. de Prerog. 57. b.

And yet if tenant for years be outlawed, the King (or his Officers) may seize the land and term, and may plow the same land to sow with Corn, and may occupy the same in the same manner as the term or tenant might. But otherwise it is, when the tenant of a freehold is outlawed; for in such case the King may cut the grass, &c. for that it is a thing which is annual (i.e. yearly cut or fed) but he may not plow the land, nor cut the underwoods; neither shall the King, or his Officers meddle to cut or crop any trees growing upon the freehold, Vide 9 H. 6. fol. 21.

But where a Woman Executrix takes a Husband who is outlawed, the goods of the testator shall not be thereby forfeited, 33 H. 6. Br. Forf. 71.

And so if an Executor himself be outlawed, he shall not thereby forfeit the goods of the testator, Ibidem.

If a woman covert be outlawed in an action of debt or trespass, the King is not to have her Term (or a Lease for years which she hath) for that it is in the husband, 9 H. 6. fol. 52. *Et uncore joint Terme del feme serra mise en Execution pur debt al Roy per le baron: Issint le baron forfeit Terme que il ad joynment ove sa feme, per Attainder.*

He that is outlawed in a personal Action, shall forfeit to the King all such debts as are owing to him by bond or other specialty: But not such debts or other Duties, as are due to him by contract, &c. (without specialty) as it hath been anciently holden. See 49 E. 3. Br. Forf. 74. 16 E. 4. 4. & 4 H. 7. 17. Br. Forf. 107.

*Le reason del Ley fuit, pur ceo que le debtor poet aver Gage sa Ley envers le destee sur un simple contract, mes nemy envers le Roy, & pur ceo le Roy n'aver autiels debts due per contract sans specialty, eo que le act del offender ne doit prejudice le debtor.*

And yet now it is holden by Sir Ed. Coke in Slade's Case, 4 part, fol. 95. a. that he that is outlawed (in a personal Action) shall forfeit such debts and duties as were due to him by single contract. See ibid.

Of things holden jointly or in common. See hic antea cap. 14. & Plo. 323, & 343. & B. Chose in acco. 2.

No goods lawfully distrained, nor goods letten or demised, nor goods pawned or pledged, shall be taken or seized for outlawry, until the Lease be determined, or the rent or other satisfaction be yielded upon the distress, or the money paid for the pawn or pledge, 4 E. 6. Br. Dist. 75. & Fitz. Bar. 121. 22 E. 4.

But goods bailed or delivered me to keep, if the Bailor be Outlawed, these goods may be seized and taken for the King.

If a Man that is Outlawed shall make me his Executor and heir, I shall be chargeable to the King for all these goods; and it seemeth the King's Officers may seize them for the King, Vide 8 E. 4. fol. 6. b.

But no goods fixed or annexed to the Freehold, shall be taken or seized for Outlawry; as a Furnace, a Table fixed to the ground with Posts, nor Waincot, Doors, Windows, Locks, Pales and the like, 20 H. 7. fol. 13. b. & 22 E. 4. fol. 12.

Deer in my Park shall not be forfeited by Outlawry in a personal Action, by Vavisor, 10 H. 7. fol. 7. a. And yet by Brian, 18 E. 4. 14. the King may kill them, and may dispose of them to his own use.

Charter of Evidences concerning Freehold shall not be forfeited by Outlawry, 21 H. 6. fol. 1.

A Ward shall be forfeited by Outlawry, 33 H. 6. fol.

A Lease or Term for years shall not be forfeited by Outlawry before it beginneth (as it seemeth:) for a Man Outlawed if he getteth his pardon before his Term beginneth, yet he shall have his Term, by Reed. 4 H. 7. fol. 10. b.

If the Grantee of an Annuity be Outlawed, before the day of payment, the King shall have it, by Catesby; tamen quare; for if he getteth his Charter of Pardon before the day of payment, there the King shall not have it; for that it was no duty before, Danby.

If an action of Trespass be brought against a Sheriff for taking of goods, he may justify, for that an Exigent of felony was directed to him, and that he took them thereupon; and such Justification is good, although he sheweth not that he had accompted for the same to the King, 3 H. 7. fol. 3.

And if the Sheriff seizeth the Goods, and hath accompted for them in the Exchequer, and after the Outlawry is reversed: Here the Parties remedy is only by Petition to the King, Stamf. 75.

In an Action of Trespass for carrying away Goods, it is a good Plea, that the owner was Outlawed, and that he as a Servant to the Sheriff, and by his commandment took the Goods, Br. Trespass 339. 18 E. 4. fol. 9.

But note where the Lord of a Manor or Franchise, hath by Charter the goods of felons, fugitives or Outlaws, &c. there the Sheriff, or his Officers, are not to seize or meddle with such goods: And yet such Lord must have them by Charter, and not to claim them only by prescription or usage: And such Charter must be made within the time of memory, &c. (sc. since the time of King Richard the first) and by plain and special words; or else such Charter must have the aid and help of some other matter of Record, within the time of memory,

memoꝝ, as allowance befoꝛe the Iustices in Eyre, oꝛ befoꝛe the Iustices of the King's Bench, oꝛ (in some cases) befoꝛe the Iustices of the Common Pleas, oꝛ befoꝛe the Barons of the Exchequer, oꝛ by foꝛce of some confirmation by Charter of Record of some King oꝛ Queen within the time of Memoꝝ: And it shall be only good foꝛ such part of such Charter, as hath ben so allowed oꝛ confirmed, Coke 9. 27, 28.

If the Sheriff (oꝛ any other Officer) shall wrongfully seize oꝛ take one mans lands oꝛ goods, being of the same with another that is outlawed, in such case the party grieved, his Executors oꝛ Administratoꝛs may have a Writ de Identitate nominis directed to the Sheriff, &c. whereupon the party grieved shall find Sureties befoꝛe, oꝛ to the Sheriff (oꝛ other Officer which hath warrant to seise) to answer the King of the value of such Lands, oꝛ goods and chattels, in case that he cannot discharge himself: And foꝛ this the Sheriff (oꝛ other Officer) shall not take any thing of the party, but shall foꝛthwith (upon Sureties found as aforesaid) deliver to the party grieved his goods &c. again, upon pain to lose to the party grieved his double damages, and besides to be grievously punished to the King. See the Statutes of 37 E. 3. c. 2. & 9 H. 6. c. 4. & Fitz. 268.

*Identitate nominis.  
Vic' Prendi  
Sureties.*

But the better to prevent such mistaking of one man foꝛ another, the Statute of 1 H. 5. cap. 5. hath ordained, that in every Original Writ of Actions personal, Appeals and Indiments, in which the Exigent shall be awarded, there shall be additions to the Defendants name, sc. of their Estate, Degree oꝛ Mystery, and of the Town, and of the County, where they be conuersant: And that foꝛ default thereof, all Outlaries thereupon shall be avoided, Co. 6. 67. & Br. Addition 4. 14. & 19.

Pea, if the Additions of the Town oꝛ County be false, the Outlary shall be avoided thereby, Dyer 223.

Nota per *Bracton*, lib. 3. Homo utlagatus forisfacit patriam, amicos, quæ pacis sunt, quæ legis sunt, & quæ juris & possessionis sunt. Vide *Stamf.* 196. Mes ceo est d'estre intend, accordant a le several natures des Outlaries: So that this is the nature of Outlary in Capital Offences (sc. to forfeit and lose his Country, his Friends, his Peace, his Possessions, the Profits of his Labour, and of his Grounds) but in lesser offences oꝛ contempts, the forfeiture is more easie. Vide *Bracton*, lib. 3. fol. 128. b. And the same punishment were they to have who relieved oꝛ harboured them wittingly. See *ibidem*.

*Regia*

Que Outlary est un Judgment d'estre hors de Protection del Roy, & ses Leyes, *Finch.* 116.

Note also, That when the Outlary with the Exigent is returned by the Sheriff into the Court, &c. then is it a good Utlary to disable the party to sue, &c. And yet befoꝛe the Return, it is sufficient, and good foꝛ the King, and therefore the King's Officers may seise to the King's use the goods of the party Outlawed, &c. lest they be imbezelled. But the Sheriff may not sell the parties goods befoꝛe the Capias Utlag. comes to him: Neither doth the Capias Utlag. warrant the Sheriff to sell the goods. See hic cap. 25.

*Sur*

Sur brief de Capias utlagat. le Vic. poet vender les biens del party utlage ; mes il plus sagement poet conserve al oepz le Roy, Co. 5. 90. b. Dyer 363. 223.

Uncore si le utlary soit apres reverse per brief de Error, le Defendant avera restitution de ses biens, Co. 8. 143.

Iffint si les utlary soit reverse per Plea, ou que ad chre. de pardon, Vide Fitz. Return. 26. Scire facias 68. Error 62. Br. Chr. 11, 12. Error 56. Restitution 2. & utlar. 5. & hic infra.

Mes si les biens dun home utlage sont vend per le Vic<sup>s</sup> sur brief de Capias utlagat. &c. & apres le utlary est reverse per brief de Error, le Defendant avera restitution de ses biens, pur ceo que le Vic. nest compellable ne command de vender eux : car per le Capias utlagat. le Vic<sup>s</sup> est command pur prendre le corps, &c. Et bona & catalla quæ per Inquisitionem invenerit in manus nostras, ut de vero valore, &c. Et sic vide diversitatem inter mean acts & faits in Execution de Justice que sont compulsive, & acts que sont voluntary. Vide hic postea Exec<sup>s</sup> per Fieri facias, & Return super Exigent. Co. 3. 90. & 8. 143.

Uncore si le Vic<sup>s</sup> ad seise les biens dun home utlage, & ad accompt pur eux in le Eschequer & apres le utlary est reverse, in tiel case le p<sup>er</sup> ad nul remedy pur ses biens, mes tantum per petition al Roy, Stamf. de Prerog. 76.

Vide 8 R. 2. Fitz. Superfedeas 19. Que sur utlary return per le Vic<sup>s</sup> brief issira al Escheator de seiser les biens & chattels, &c.

Cestuy que est utlage sur Indictment de Trespass al suit le Roy, ferra fine & ranfome (que est treble le fine al meimes) Br. Utlag. 37. vide Co. Lit. 127. que fine & ranfome in legal understanding sont tout un.

Si al temps del Exigent agard, le Defendant soit in Prison, ou ouster le meere, ou que le Exigent issira auterment erronee, uncore si le Vic<sup>s</sup> seiser ses biens al oepz le Roy, le Defendant n'avera restitution de ses biens, tanque le agard del Exigent soit defeate : Et pur ceo in tiels cases, le Defendant, ses Executors, ou Administrators doivent porter leur brief de Error, de reverse mesme le Exigent ; car intant que le Roy est intitule (a les biens, &c.) per matter de record, il besoigne que ceo soit avoid per matter de cy haut nature, Vide Co. 5. 111. 43 E. 3. f. 17. & Fitz. Forf. 19. 31. & Plow. 137. b.

Plea.

Uncore vide utlary reverse per plee, sans brief de Error. Br. Utlag. 28. 31. 47. 75. 77. & 79. Fitz. Index. tit. Utlag. & Dyer 223. Co. Lit. 259.

Auxi per le Stat. 6 H. 8. c. 4. tous utlaries ewe contrary al dit Stat. ferra avoid per Averment, sans suer ascun brief de Error, Vide etiam Stat. 31 E. c. 3. P. Exigent 5 & 15.

Mes devant allowance d'ascun brief de Error, ou reversing d'ascun utlary per plee ou auterment le Defendant serra lie de appear, & de responder le Plainiff en le former suit, sur un novel action, & de satisfaire le Condemnation, &c. 31 Eliz. cap. 3.

*Si home ad charter de pardon portant date devant le Exigent, les biens del pardon. party sont save pur ceo que le cause del saving de eux, appiert de Record, Co. 5. 111. Vide Stamf. 184.*

*Mes nota, que devant pardon de utlary serra graunt, si le utlary fuit sur original (devant son apparance) le party doit primes yeld luy mesme al prison, Fitz 247.8 &c. Et si le utlary fuit apres judgment, le party doit primes agree ovè le plaintiff pur son det ou damages, Vide Stat. 5 E. 3. c. 12. Fitz. Char. de Pardon 27, & 28. & Fitz. Utlag. 4. Finch. 350.*

*Et si le Roy pardon home que vient eins per Capias utlagatum, devant que le party soit satisfie, si soit apres judgment & le Vic. luy suffer de escape, le plaintiff avera action envers le vic. &c. Ad. H. 36 Eliz.*

*Auxy cestuy que voile defeat un utlary per reason de imprisonment, doit yeeld luy mesme al prison, &c. 5 E. 3. c. 13.*

*Auxi nota que charter de pardon ne serra allow, tanque le party utlage ad sue un Scire facias de garner le party plaintiff, & s'il appear, donque le def. respondra luy, &c. Vide Termis del Ley in. Utlary.*

*Note, That the Sheriff nor his Officers, may not Arrest or Attach the Body of any Man that is Outlawed in any personal Action, without a Writ of Capias utlagat. first delivered to him; but otherwise it is where the utlary is for felony or Treason. See Dyer 120.*

*And yet the King may imprison the body of him that is outlawed in any personal action, until he shall purchase his charter of pardon, to which purpose the said Writ de utlagato Capiendo is, Old na. bre. 168.*

*Auxi l'opinion in 1 E. 3. fol. 2. est que si home soit utlage in personal Action, chescun home poet luy prend. & detein.*

*Note also, That the goods of persons outlawed may belong to a Subject, by the King's grant, but not by prescription, Co. 9. 27. 29. Plo. 81. b.*

*There be other things belonging to the King, quia non apparet dominus eorum, in regard that the true Proprietor or Owner thereof cannot be known, as Treasure trove, Wreck, &c.*

## C A P. XVI.

## Treasurer trove.

**T**reasure trove dicitur, where mony or coin, gold, silver, plate, or bullion is found in any place, the owner thereof being unknown: *Treasure trove.* and such goods or treasure the King is to have; and the Sheriff may seize

seize it to the King's use. And it sameth to be all one, whether it were hid in the ground or only lost. *See* Bracton 119, 120. Br. Coron. 176. & Presentments 24 & 27. Aff. pl. 19. Finch.

*Mr.* Bracton, lib. 3. saith, Occultatio thesauri inventi fraudulosa, est quasi crimen furti. Est autem thesaurus, quædam vetus depositio pecuniæ, vel alterius metalli, cujus non exeat modo memoria, ut jam dominum non habeat, & sic de jure naturali fit ejus qui invenerit: Alioquin si quis aliquid lucri causa, vel metus, vel Custodiæ, recondiderit sub terra, non erit thesaurus, &c.

And so treasure trove *sc.* anciently hid in the Earth, belongeth to the King; but not treasure found upon the Land, and not hid in the Earth; nor treasure found in the Sea, for such belongeth to the finder, and not to the King. *See* Br. i. 26. Stamf. i. 40. a. Finch. f. 45.

But howsoever, non pertinet Domino Regi, nisi quando nemo scit quis abscondit thesaurum, or quando nemo scit cui le coine trove appertain: For if the owner thereof, or he which hid the same, be known, then he shall have the Treasure, Coin or Goods found; and if he die before it be found, then it sameth his Executors or Administrators shall have the same. *See* Direland's Case, M. 22 H. 6. Br. d'Aff. 69.

Also all Mines of Metal (except Mines of Gold and Silver) do appertain and belong to the Owners of the Soil wherein they are found; and the Mines of Gold and Silver belong to the King, Br. Coron. 176. *See* Br. Prærogat. 134. & 137.

Also *see* Master Plowden, fol. 314, &c. That if Gold or Silver be in Mines of Copper, Tinn, Lead, or other base Metals, the whole Mine pertaineth to the King, *sc.* all Mines of Gold or Silver, in which the Gold or Silver is of the greater value, belongeth to the King, Plo. 336. & Finch. fol. 45.

*Nota que tous Mines Royal, soient ils de pure Ore, ou Argent, ou mixt, peent estre grant al Subject, per apt parols, et ne sont inseperablement incident al Corone, Plo. 336.*

*Le punishment pur Treasure trove prise et emport, et de wreck de meere, et waif, serra per Imprisonment et Fine, & nemy de vie et membr. Fitz. Coron. 187, & 265.*

### Wreck of the Sea.

*Mr.* Bracton, lib. 3. fol. 120. saith, Wreckum dici poterit, quasi derelictum, ut si quid (navis levandæ causa) à nave projectum fuerit ab aliquo, sine animo retinendi vel repetendi, id proprie dici poterit wreckum cum res projecta habita sit pro derelicta, &c.

*Wreck.*

Wreck is by the Civilians called Naufragium, where a Ship perisheth at Sea. *See* L. c. 4.

Concerning

Br. Wreck  
2.

Concerning Wreck of the Sea the Statute of Westminster 1. (made Anno 3 Ed. 1. 4.) is thus: Where a Man, a Dog or a Cat escape quick or alive out of the Ship to the Land, no such Ship or Barge, nor any thing within them, shall be adjudged Wreck; but that the Goods shall be saved and kept by the view of the Sheriff (or Coroner) and shall be delivered into the hands of such as are of the Town where the Goods are found; so that if any Sue for those Goods, and prove that they were his, within a year and a day, they shall be restored to him without delay; and if not, they shall remain to the King, (as belonging to him by his Prerogative) and shall be seized by the Sheriff or Coroner, and praised by a Jury, and delivered to the Town, who shall answer therefore, &c. Vide officium Coronat. 4 E. 1. & Doct. & St. 156, 157.

*Comment que les parols del ceo Stat' sont tiels, sc. soient les choses gardes, &c. per queux parols semble que le ville ne poet prendre tiel biens sans le view & delivery d'ascun Officer le Roy, uncore semble que le ville poet ceo prendre sans ascun delivery del Officer; & auxi que le Vic' poet ceo prendre sans committer le Custody del eux al ville.*

Note, that if the Goods within such a Ship be of that sort that they cannot be kept sweet and good by the space of a year, there the Sheriff, or Officer, may sell such Goods, and deliver the Money taken for them, to the Town to keep and answer for them. But if the Goods were such as might be kept a year, there the Goods shall be kept and preserved during the year, or else the Officer is punishable, &c. Pl. 466.

Do. & Stud.  
cap. 51.

By the Common Law if Goods were Wrecked, they were immediately (and ipso facto) forfeited: And now by the former Statute of Westminster 1. c. 4. the party shall have a year and a day to prove his property, if a Man, a Dog or a Cat shall escape to Land out of the Ship alive: But if nothing escape out of the Ship alive, it sameth that the Goods Wrecked are presently forfeited to the King, so as the owner shall not be admitted to prove his property, for that this proof within the year and day is given only where something escapeth alive. Terms of the Law, & Br. Wreck 3.

Br. Wreck  
3.

Where Wreck belongeth to another than to the King, he shall have it in like manner as the King should; but there the Sheriff is not to meddle therewith: As where the Lord of any Liberty, franchise or Manor, hath Wreck granted by Charter, &c. or hath had any Wreck by Prescription, &c. for otherwise the King by his Prerogative shall have the Wreck of the Sea throughout the Realm, 17 E. 2. cap. 11.

27 E. 3.

But by the Statute made 27 E. 3. c. 13. if any Ship shall perish on the Sea, and the Goods come to Land, which be no Wreck, the owner shall be required to prove the said Goods to be his own, and upon proof thereof they shall be presently delivered, paying to them that have saved and kept the same, convenient for their travel, by the discretion of the Sheriff or other Officers, with the assent of four or five of the best or most sufficient discreet men of the Country.

Mr. Bracton, lib. 3. saith thus hereof, Item magis proprie dici poterit wreccum, si navis frangatur, & ex qua nullus vivus evaserit, Et maxime, si dominus rerum submersus fuerit: Et quicquid inde ad

N

terram

terram, venerit, erit Dom. Regis: And therewith agrath the Book of Entries, fol. 611. 612. tit. Trespals in Wreck. And accordingly also it was adjudged in Sir Henry Constable's Case, Co. lib. 5. fol. 126. that nothing shall be said to be Wreccum Maris, but such Goods only, which are cast, or left upon the Land by the Sea: For Wreccum Maris signifieth, illa bona quæ naufragio ad terram appelluntur. Sed quæ in Mari longius à littore inveniuntur ita quod constare non possit ad quam terram vel regionem essent applicanda, tunc quicquid ita inventum fuerit, erit inventoris, &c. quia non est aliquis qui inde privilegium habere possit; Rex non magis quam privata persona, &c. Bracton, fol. 120.

*Nota que wreck de mere ferrat tie per le Common Ley, & neim per ley Admiralty: 15 R. 2. c. 3.*

There be other Casual Profits of like Nature, as  
*Flotsam, Jetsam and Lagan.*

*Flotsam.* Flotsam, is where a Ship is drowned, or otherwise perissheth, and the Goods float upon the Sea, or swim upon the Water, sc. upon the top of the Water, Vide Minsh. Co. lib. 5.

*Jetsam.* Jetsam, cometh of the French word Jetter, to cast out, and is when a Ship is in peril to be drowned, and for to disburden the Ship, the Goods are cast into the Sea, and after the Ship notwithstanding perissheth. Co. lib. 5.

*Lagan.* Lagan, vel potius Ligan, is when the Goods are so cast into the Sea, (sc. to disburden the Ship, &c.) and after the Ship perissheth, and those Goods so cast out, are so heapy that they sink to the bottom, and the Mariners, to the intent to have them again, do tie unto the said Goods a Cork, or other thing which will not sink, so as they may find them again; and they are called Ligan à Ligando. Co. lib. 5.

And so note, That Wreck is when the Goods are by the Sea cast upon the Land, and so infra comitatum, whereof the Common Law taketh Comuzance; but the other three (Flotsam, Jetsam and Lagan) are all upon the Sea, and therefore of them the Lord Admiral hath jurisdiction. Co. lib. 5.

Note also, That none of those Goods which are called Flotsam, Jetsam or Lagan, shall be Wreck so long as they remain in, or upon the Sea; and being upon the Sea, Quære if they are not due and belonging to the Lord Admiral by vertue of his Letters Patents.

But if any of them shall be cast upon, or driven to the Land by the Sea, then they shall be called and said to be Wreck, and so the King shall have them, or any other Lord, &c. by grant of Wreck from the King may have them, for that they being cast upon the Land, will pass by the grant of Wreck, Co. 5. 106.

And the King shall have Flotsam, Jetsam and Lagan, (remaining in or upon the Sea, sc.) when the Ship perissheth, or when the owner of the Goods is not known, Co. 5. 107.

Note,

Co. 5. 117. Note, That the Ship must perish, or else the Goods cannot be forfeit, nor said to be Wreck. But though the Ship perish, yet if any of the Servants escape, the Law saith, that they have the Custody of the Goods, and so they are not Wreck, nor forfeited.

If the Ship be broken by Tempest, and the Goods cast upon the Land, they are not Wreck, Fitz. 112. c.

So if Goods are cast into the Sea for doubt of a Tempest, they are not wreck, nor forfeit, 46 E. 3. fol. 15. And therewith agreeth Master Bracton, lib. 2. *Res habita est pro derelicta ubi dominus ita in definit esse dominus; si autem causa navis allevianda, non sic, quia non ea voluntate eiecit quis, ut definat esse dominus, &c.*

Co. ibid. Also in Sir Henry Constable's Case aforesaid, it was adjudged, that the aforesaid Statute made 3 E. 1. concerning wreck, was but a Declaration of the Common Law; and all that is therein contained concerning wreck, shall be also extended to Flotsam, Jetsam, and Lagan: And that if the owner of such Goods shall prove that they were his within a year and a day, they shall be restored to him; and if the owner dieth, his Executors or Administrators making proof that they were their Testators, &c. they shall be restored to them.

Note, That the year and day in such cases shall be accounted from the time of the taking or seizure of such Goods as wreck; for altho' that the property be in Law vested in the Lord before seizure, yet until the Lord (by his Officers or Servants &c.) seizeth them, and taketh them into his actual possession, it is not known either who claimeth the wreck, or to whom the owner shall resort to make his claim, and to shew his proofs. *Vide quel maner de proofs le owner fera,* Co. 5. 108. a.

Co. ibid. If the wreck belongeth to the King, the owner may have a Commission to hear and determine the truth of such proofs as the owner shall bring, &c. which must be by a Jury of twelve Men.

It was there holden, That the King shall have Flotsam, Jetsam, and Lagan, by his Prerogative, although they still remain in, or upon the Sea; (for the Sea is of the Kings ligeance, and parcel of his Crown of England, &c.) and yet another may have them by the King's grant, Co. ibid.

Co. 5. 108. Note, That at the first the Common Law gave as well wreck Flotsam, Jetsam and Lagan, upon the Sea, as Estrays, Treasure trove and the like to the King: For that by the Rule of the Common Law, when no man can claim property in Goods, the King shall have them by his Prerogative.

Also note, That wreck is an Estray upon the Sea, coming to Land, as an Estray of any Beast is upon the Land coming within any privileged place or seignior, &c. And the Law giveth in both cases (sc. in case of wreck and Estray) a year and a day to the owner to claim them, Co. 5. 108. & Finch. 45.

Also if the Goods of an Infant, Woman covert being an executrix, a man in prison, or of a man beyond the sea, shall be wrecked at the sea,

if they be not claimed and proved to be theirs within the year and day, they shall be all forfeit, &c. For the Law is strict and binding in this case, as well as in case of an Estray, (whereof see antea tit. Estray.)

By the Statute de Prærogativa Regis (made Anno 17 E. 2.) the King shall have wreck of the Sea throughout the Realm (except in certain places privileged by the King) which Statute also is but a Declaration of the Common Law: Co. 5. 108.

Whales, &c.

Also by the same Statute of Prærog. Regis, the King shall have Whales and great Sturgeons taken in the Sea, or elsewhere within the Realm, (except in certain places privileged by the King) which was also the Common Law before the said Statute, Co. 5. 108. Pl. 315. Br. lib. 3.  
120.

Also it seemeth by the Common Law, that the King (by his Prærogative) shall have other Fishes Royal taken in the Sea, or elsewhere within this Realm, as the Porpus, &c. 39 E. 3. Br. Prærog. 35. for the excellency of the person of the King doth draw and appropriate unto him the things of excellency, Pl. 315. vide B. Prærog. 35. *que le Roy avera.*

## C A P. XVII.

### Wards.

Wards and Escheats.

By the Statute de Scaccario, made Anno 51 H. 3. Sheriffs shall seize and keep all such Wards and Escheats (that are not in fact) as belong to the King, which be within their Shires; and of the Issues thereof they shall be answerable in the Exchequer, when they account for their Counties; and they might let to Farm or otherwise, such Wards and Escheats, &c. and might seize their Bodies, &c. 51 H. 3.

Also by the Statute made 2 & 3 E. 6. c. 34. it seemeth that Sheriffs shall be accountable for all Wards Marriages and Reliefs; and for all Fines for Alienations and Infrusions made by the King's Tenants within their County. 2 Ed. 6.

But by the Statutes made 32 H. 8. c. 46. & 33 H. 8. c. 22. & 34 H. 8. c. 46. all the King's Wards are to be within the order, survey, and governance of the Court of Wards; together with their Lands, Rents, and Issues thereof. And the Escheator is now the Officer appointed to enquire thereof, and to seize the Lands, &c. But at this day the Escheator doth not, nor cannot seize, until there be an Office first thereof found, &c. Stamf. de Prærog. 78. b. vide Br. Office devant Elch. 12. 14. 55. & 56 Inrusio, 18 Prærog. 30. Co. 8. 169. & 9. 95. 32 H. 8.

The King (by his Prærogative Royal) shall have the Wardship of all their Lands, which hold of him in chief by Knights-service, whereof the Tenants were seized in their demesne as of fee, the day of their death, of whomsoever they hold, &c. 17 E. 2.  
c. 1.

Also

Also the King by his Prerogative of the Wardship of the Heir, shall have Rent Charges, Commons, Eschevers, Annuities, Advowsons, Offices and the like, which descend, &c. to the Heir : 12 H. 7. Br. Prerog. 63.

*Nota, le possession en Ley d'un chattel est vest in le Roy sans aucun Office trouve, & par ceo ou le Roy est entitle al wardship, ou Premier seisin, le Officer le Roy poet seiser & prendre les profits al use le Roy, Stamf. de Prerog. fol. 54. a.*

## C A P. XVIII.

## Escheats.

**N**Ote that Escheats do happen two manner of ways : 1 Per defectum sanguinis. 2. Per delictum tenentis, sc. by attainder, Co. Lit. 13.

*De haut Treason, le Roy avera le Escheat, de quocunque tenuerit, 22 Ass. Escheat: pl. 49. Br. Escheat 14 Stat. 25 E. 3. c. 2. 26 H. 8. 13.*

*Mes ceo est quant l'offend. sont atteint durant leur vies, 34 E. 3. c. 12.*

Also this must be understood of such Lands whereof the person attainted was seized, Co. Lit. 13.

*Ou le tenant est atteint de Felony, il est al election del Seignior d'aver brief de escheat, suppose que le tenant fuit atteint de Felony, ou que il devie sans heir, car per l'attainder le sanke est corrupt, 48 E. 3. fol. 2.*

*Si home fait Felony, & puis purchase terre, ou terre descend a luy apres; ceux terres sont forfeit & escheat, cybien come le terre que il avoit al temps del Felony fait, ibidem.*

*Br. Esch. 29. Home atteint de Heresie, son terre ne escheat, si non que il soit mise al execution; & donque si le terre soit tenu del Roy, il avera le escheat.*

*Si home soit miscreant, sa terre escheat. al Seignior, 5 R. 2. Fitz. Trial 54.*

*Roy avera le escheats del tenants, del Archieuesques, & Evuesques in temps de vacation, 17 Ed. 2. c. 14. Vide hic antea Forfeit.*

*Roy avera le escheats de tous les tenements en London, de quocunque ils sont tenus, 49 Ed. 3. 5. Fitz. Prerogat. 15.*

*Omnes escaeta civitatum mero jure pertinent Domino Regi, de quibuscunque feod. tenta sunt, 8 Ed. 2. Fitz. Esch. 12. Finch.*

*Alien nee ad issue fits, & puis est fait Denisen, & purchase terre & devy, tiel fits n'averá le terre, mes Escheater.*

*Home ala ultra meere, extra allegiance le Roy, sine licentia Regis, & la espousa feme, & ad Issue fits ilonque, & devy la, tiel Issue ne inheriter, mes le terre Escheater, Br. Esch. 8.*

*Fits est atteint de Felony in vie le pere, & happa Charter de pardon, le pere devy, & le fits survive, le terre Escheater, ibidem.*

*Le eigne fits est atteint de Felony, puis son pere devy, le terre le pere Escheater, 49 Ed. 3. Br. Discent. 7.*

*Ou beir fault per demy sanke, ou de part le pere, &c. le terre Escheater, ibidem.*

*Terre tail ne Escheater pur le Felony, ou pur le attainder del pere, 29 Ass. pl. 61.*

*Rent ne Escheater, car le terre est tenu, & nemy le Rent.*

*Nota, que si tenant le Roy devy sans beir, & nul enter, le Franktenement est in le Roy, sans office, ou entre, car Franktenement ne poet merger, 9 H. 7. f. 2. Br. Escheat 25. & 33. Plow. 229. b. Et en tiei case, le Roy a son pleasure poet enter, ou seise per son Officer, Stamf. de Prerog. 54. a.*

*By the Statute de Scaccario, Sheriffs shall seize the Escheats that fall, to remain unto the King in fee, and shall certifie the King of them without delay, 51 H. 3.*

*But quere what the Office or Authority of a Sheriff is, at this day, concerning Wards or Escheats; for the Escheators Office is properly to look to Wardship, Escheats, and other Casualties belonging to the Crown, Co. Lit. 13. Plus hicc. 6. 7. & 14.*

## C A P. XIX.

## Ideors.

**I**deot quis, Vide Co. 4. 126. Co. Lit. 145. Stamf. 35.

*Idcots.*

*If there shall be an Ideot (sc. a natural fool, à Nativitate) there may be a Writ awarded to the Escheator, or to the Sheriff, of that County where such Ideot is abiding, both to examin him, and also to enquire by a Jurp, &c. of such Ideot, and of his Lands, &c. Fitz. 232, 233. Stamf. de Prerog. fol. 34.* Regist. 126  
267.

*But there can be no seisure of the Lands, &c. without an Office first found, Stamf. ibid. 55.*

*La Stat. de Prærogativa Regis, est quod Rex habebit Custodiam terrarum fatuorum naturalium, capiendo exitus eorundem, &c. Et coment que le dit stat. dit Custodiam terrarum, uncore le Roy avera cibien le Custody del corps, biens, & chateux del Ideots come de leur terres, &c. & cybien ceux terres que il ad per purchase, come ceux queux il ad come heir, &c. Co. 4. 126.*

*Et nota, que le Roy avera le Custody de tiel Ideots durant leur vies, Car les parols del Statut sont, & post mortem eorum reddat eam rectis hæredibus, Stamf. de Prerog. 34. 35.*

*Sed inveniet (Dominus Rex) eis necessaria, sc. le Roy doit provider pur le maintenance de tiel Ideot, sa feme, children & family, 17 Ed. 2. c. 9. Stamf. 35. 37.*

*But note that all Ideots and natural fools, and their Lands, &c. Shall also be in the ordering of the Court of Wards, &c. Stat. 32 H. 8. c. 46. Stamf. 36.*

*And the King shall here be answered of the Issues of their Lands, but from the time of his title found by Office, Co. 8. 170. Stamf. 84. & 38.*

*And the King shall have to his own use the possessions of an Ideot or fool natural, and the King may let the same to farm rendering a Rent, Finch. 95.*

*Mes le Roy n'avera le Custody del terre, que le Ideot teigne per Copy, car ceo n'est que estate a volunt, &c. Co. ibidem.*

*Auxi le Roy ne poet aver tiel ter al que le Ideot ad title per Entre, ou action, Finch. 95.*

*Auxi le Roy n'avera les profits del terre, &c. forsque apres office trouve; car per le Office appiert de record que le Roy ad droit de seiser les terres, Co. 8. 170. Stamf. de Prerog. 34.*

*Et sic nota que le Roy seisera les terres des Ideots, & Heir suera livery: Mes antierment est de terres de Lunaticks, & de terres del Ideots per accident ou infirmity, Co. 4. 126. & Br. Ideot 5. Stamf. 34. & 37.*

*Lunaticks le Roy protect. eux, & prend. les profits de leur ters, & biens, & ove ceo maintain le Lunatick & son Family; Mes le Roy ne prender ascun part des profits, &c. a son oeps demesne, 17 E. 2. c. 10. Co. 4. 127.*

*Quel person serra dit Ideot, & quel Lunatick, Vide Co. 4. 124. 128. Fitz. 233. b.*

*Le Maner del Trial del Ideot, Vide Co. 9. 31. Stamf. 34. & Fitz. 233. b.*

*Si un soit trouve Ideot, que re vera n'est issint, Coment il avoird cel Office, Vide Fitz. 233. a. Et Stamf. de Prerog. 36.*

*Que avera le ordering, &c. del terres del Ideots, Vide Stat. 32 H. 8. c. 46. P. Prerogat. 10. & Wards 27.*

*¶ assly,*

Lastly, The words of the Sheriff's Oath are, You shall truly keep the King's Rights, and all that belongeth to the Crown; Now these former, and other the King's Prerogatives of the like kind, altho' they are a great part and portion of the Rights, Profits, and commodities of the Crown, yet this Prerogative doth not only extend to such benefit and profits as the King is to have from his Subjects; But also to the King's person, to free it so that it shall not be subject to any Mans suit; And also to his possessions, so that they may not, nor cannot be taken from him by any violence or wrongful disseisin; And to his Goods and Chattels, so that they are under no tribute, toll, or custom, nor otherwise distrainable. *Stamf. Prerog. 5.* And in all these and other the King's Prerogatives, the Sheriff is to do his best endeavour for the keeping and preserving thereof, so far forth as belongeth to his Office, *Plus Stamf. 74, 75. Vide Ass. tit. Prerog. 45. 58, 59, 60.*

For the King's Person, *See hic c. 22. & Br. Petitio. 12. 28.*

For his Possessions or his Lands, that they be not to be extended or taken in Execution, *See hic c. 26.*

That his Lands are exempted from distresses for Rent, &c. *Ibid. & Stamf. 75. Vide Ass. tit. Distress 12.*

That his Goods cannot be taken for Debts or Estrays, or for Wreck, *Ass. tit. Prerog. 44. & Br. Wreck 2. Plo. 243. b.*

That the King shall find no pledges *de Prosequendo*, *hic c. 52.*

That the King shall not be amerced being Non-suit, *Co. 8. 61. Br. Amercement 53. Fitz. 31. f. & 101. a.*

## C A P. XX.

### Direction and Execution of Writs.

*A que breves  
serront direct.*

The Office of a Sheriff consisteth chiefly in the Execution and serving of Writs and Process of Law, to compel Men to appear to answer to the Law; and also for taking of Mens Bodies or Lands, according to Judgments given in Superior Courts; And to do this he is the immediate Officer of the King and all his Courts: And he is sworn that he shall truly do this, and he must do this without any favour, dread or corruption. *Dyer 60. b. Plo. 74.*

*Al Vice.*

By the ancient Law of this Land, all Original Writs (purchased at the suit of the party to maintain actions) are to be directed to the Sheriff of the County where the cause of the suit doth arise; and cannot be directed to any other person than the Sheriff, unless it be in special cases where there shall be good cause of exception to or against the Sheriff, and there the Writ shall be awarded to the Coroner, who then standeth in the place of the Sheriff. *Co. 3. Pr. Br. Office Finch. 53.*

*Et*

Et c'est Action de Debt pur escape poet estre port en le County (sc. direct al Vic' del County) lou le Arrest, ou escape fuit fait, mes nemy in ascun auter County. Mes Trespafs de Battery, biens emports, en escripts enfrient, poet estre in ascun County, car ceux ne sont local. Auterment de berbes debruisse, Arbres succide, ou tiels, ils serra port in leur proper County, 14 E. 4. fol. 4. 2 Mar. Br. Attaint. 104. & Finch. 53.

Auxi per le Stat. 6 R. 2. c. 2. est ordein que brief de Debt, de Accompt, & tous auters tiel semble quecunque serra direct al Vic' del County lou le cause d'Action commence; et si soit monstre in le plea sur les dits briefs, que le contract se fist in auter County, que in le brief Original soit contain, incontinent le brief abater, Vide Fitz.bre. 18.23. 44. 649. & Br. Examin. 2. & visne i.

Also where it is alledged by either party (sc. by the Plaintiff or Defendant, &c.) that the Sheriff is cosin, or otherwise of kindred, or tenant to the other party, and the other party doth not deny this: In such cases process shall be directed to the Coroners of that County, and shall be executed by them, Br. Chall. 78. Officer 14. & Proces 63. 70. Dyer 188. 300. & 376.

12 H. 4. 24. So where the Sheriff is a party to the suit, the process shall be directed to the Coroners, Kielw. 96.

9 H. 6. 10. And yet you may observe much contrariety in our Books herein, 14 H. 6. 1. for some hold a difference where the Sheriff is plaintiff, and where defendant: For where he is plaintiff, the process shall be directed to him against the defendant, and he may serve it himself (sc. the summons and Capias, and other like original process shall be directed to him against the defendant) except the panel of the array which he shall not make; and except where he is named Sheriff in the Writ, for there the Coroners must execute it: And it seemeth that the Writ to the Coroners in such cases is, that the Sheriff se non intro-mittat. 18 E. 4. 7. & Br. Proces 9. 14. 40. & 118.

Br. Proces 9. 65. 145. And where the Sheriff is plaintiff (and not named Sheriff in the Writ,) there he may serve the process, sc. the Summons, Capias, and the like upon the defendant, and he or his Under-Sheriff for him may afterwards put in pledges de prosequendo in the Chancery, or in the Court of Common-Pleas where the Writ dependeth; and when they come to issue, he, or the defendant may shew that he is a Sheriff, and then the Venire facias shall be directed to the Coroners, Keil. 96. for the Venire facias.

And yet see Br. Proces 60. & 106. 118. 140. the contrary, sc. that the process shall go to the Coroners, wheresoever the Sheriff is a party, and that there should be no diversity where he is plaintiff, and where defendant, and that he may neither serve process upon him, nor for himself: Ideo quare.

9 H. 6. 10. If the Sheriff be defendant, he cannot serve the process upon himself: 2 H. 6. 12. 8 H. 6. 30. 9 H. 6. 10. Br. Proces 9. Neither can he distrain nor summon, or warn himself, Finch. 9. & hic c. 45.

And yet the Books vary in this also: See 18 H. 8. 3. Fitz. & Register 81. b. & Thel. 107, 108. Vide Plow. Wimbish's Case, an original Writ,

Writ, *de assize de novel disseisin*, directed to the Coroners, was adjudged good, in regard that Assizes ought to be speedy, &c. But otherwise there seemeth a difference between other Writs original, that they in all or most cases shall be directed to the Sheriff, but that Judicial Writs may be directed to the Coroners. *See Plow. 74.*

But (in an Assize of *Novel disseisin*) if the Sheriff (by craft to have the Writ directed to the Coroners) be named one of the disseisors where indeed he is no disseisor, nor ever was disseisor or tenant of the Lands in demand, the tenant in the said Assize may aver this covin, or the Sheriff may shew this matter and covin to the Court, and pray that it may be enquired of; and if it be found that the Sheriff was no disseisor, but was named disseisor by collusion, then shall the Writ be abated, and the plaintiff in the grievous mercy of the King: 11 H. 6. c. 2. Fitz. N. Br. 155. a.

*Default.*

Also in some cases where the Sheriff maketh default of serving the process, it shall be directed to the Coroners: *See Fitz. Process 48. 51. Br. Officer 43. & Fitz. fol. 54. e.*

And in some process (sc. an Attachment) shall be directed to the Coroners against the Sheriff, for his default in not serving or returning process, &c. Fitz. 54. e. 62. o. 64. b. 68. e. 98. c.

*Partiality.*

So where partiality is found in the Sheriff in returning the Array (or Jurry) partially, and thereupon the Jury is quashed, there process shall go to the Coroners, and in such cases also the Writ to the Coroners is that the Sheriff shall not intermeddle: 18 E. 4. fol. 3. *See Dyer 188. Co. L. 138.* Br. Process 155. Co. 10. 103. 104.

And yet where any are returned or put in the pannel by the Under-Sheriff, or by the Bayliff which are partial or favourable, &c. the Array shall be quashed for that cause, and by some opinions the Sheriff shall make the new Array, for that there was no default in him, 28 Aff. Pl.

But others hold the contrary, for that this shall be intended the Sheriff's own act, and so it appeareth by the Return; for therein the Sheriff maketh no mention that he did write to his Under-Sheriff or Bayliff, as to a Badliff of franchise, &c.

But if the Sheriff be dead or removed, or that otherwise there be no Sheriff, there the process shall not be directed to the Coroners, but shall stay until another Sheriff be chosen; for that the Sheriff being the immediate Officer to the Court, process shall not go to the Coroners but only in special cases; as where it is alledged that the Sheriff is of kindred, or tenant to either party, or that the Sheriff is party to the suit, *ut supra*, or that the Sheriff made default, or is found partial, *ut supra*; in such cases process shall be directed to the Coroners, and otherwise not. Br. Process 7.

If the Venire facias be awarded to the Coroners, where it ought to have been directed to the Sheriff, or *à converso* (and so the Jury be returned by such as have no authority) it is Error; and is not remedied by the Statutes of Jeofails: Co. 5. 36. & 8. 162, 163. Dyer 367. Pl. 40.

*Note*

Note where the Original Process is once directed to the Coroners, all the residue of the process in that suit shall ensue the original, and shall likewise be directed to the Coroners, pea altho' that Sheriff be removed or dead, or acquitted, and another indifferent Sheriff be chosen, depending that suit and process: See Br. Process 4. 73. 118. 144. 155. & 183.

44 H.4.31  
39 H.6.40. If Process goeth out Coronatoribus, and there be four Coroners, by some opinions any two of them may serve and execute, or return the Process; for the plural number Coronatoribus is observed: But one of them alone cannot execute or return such Process: Br. Ret. 42. See Co. 4.46.

And yet by the Book 31 Ass. 20. Br. Officer 22. the return must be by all four: And according to the Opinion of that Book, Mr. Stamf. f. 53. saith, that altho' in one County there shall be many Coroners, yet it is not needful to have above one in the enquiry super visum corporis: And also that in giving Judgment upon an Hylary, it sufficeth if it be given by one; Also that in Redisseisin it sufficeth to have two Coroners: But where process is to be awarded to them, there all the Coroners within the same County ought to serve the same, or otherwise it is not good, for that they do this as a Minister, and not as Judge as they do in the other cases; And so also was the opinion of Hawk, 14 H.4. Br. Reto. 42. See Fitz. Reto. 15. 18. And yet if three of the Coroners die, the fourth may execute and return the Process until more Coroners be chosen, Co. Lit. 181. b.

Br. Ret. 42.  
14 H. 4. Where process goeth out to the Sheriffs of London or York (there being two Sheriffs) and one of them return the Writ alone, it is not good, altho' the other be dead; for then there are no Sheriffs; and when the Law giveth authority unto two persons, one alone cannot execute it, Co. 4. 46.

And yet it is used that one of them doth serve the writ, and that is the serving of them both; but when it is returned, that must be in the names of both of them: 31 Ass. 20. Br. Officer 22.

Upon a suit against the Citizens of York, the Venire facias was awarded to the Sheriff of the County, for that the Officers of the City were Citizens, Dyer 279.

Bo. Process  
155. For favour in the Under-Sheriff (sc. where he is of kindred, &c. to either party) that being alledged, the process shall be directed to the High Sheriff, with this clause (as it seemeth) that the Under-Sheriff shall not meddle: And so where the Under-Sheriff is a party, 18 Ed. 4. fol. 3.

Br. Process  
58. 71. But if both the Sheriff and Coroners shall be found partial or faulty, then the process shall be directed unto certain other persons to be chosen or named by the Court, which persons upon a Venire facias to them directed, shall make and return the pannel, and after the return thereof, they shall serve and execute all other the process which shall follow thereupon, as the Sheriff himself should have done if the process had been directed to him: See 15 E. 4. f. 24. Bro. Chal. 69. & 4 H. 7. 3. 14 H. 7. 31. 8 H. 6. 12. & Finch. f. 60. Co. L. 158.

*Al Esiers.*

*Que terra Triers, & quot, & que poiet estre alter, Vide Co. Lit. 158.*

Sir John Fortescue (sometimes Lord Chief Justice, and after Lord Chancellor to King Henry the Sixth) writing hereof saith, If the Sheriff shall return a favourable pannel, exception may be taken thereto by either party, &c. which exception if it be found true by the Oath of two of the same pannel (chosen thereto by the Justices) then the pannel shall be quashed; and then the Justices shall write to the Coroners of the same County, that they make a new pannel; and if that be found faulty, that shall be also quashed; and then the Justices shall choose two Clerks of the same Court, or two other persons of the same County, who in the presence of the Court, upon their Oaths, shall make an indifferent pannel, which pannel shall not be challenged by either party: And yet exception may be taken by either party, to the poll or person of any of such pannel, as to say that he is cousin, &c. to the other party, which being found, such person shall not be sworn, Vide Co. 9. 33. a. Co. Lit. 158.

Also in a place exempt out of every County (as the Palace of Westminster is) there the Writ shall be directed to the Gardian or Keeper of the Palace, for he is there the immediate Officer to the Court, and in nature and stead of the Sheriff, Finch. 52.

*Evisqui.*

Sometimes also process shall be directed to the Bishop, &c. as where the Defendant is named or returned to be Clerk, Non habens laicum socum, there a Venire facias Clericum shall go to the Bishop; and by vertue of this writ, the Bishop shall sequester the Benefice of such Clerk, to compel him to appear and answer, and must also warn his person to keep his day, &c. and if the Defendant cometh not in at this day, a distringas Episcopum shall go out to the Sheriff, to cause the Bishop to make his Clerk to come in: And thereupon may the Bishop sequester all the benefices of the Defendant, and shall answer to the King for the Issues thereof, &c. Br. Process 14, 62, 64, & 127.

But if the Bishop be a party to the suit, there the Process shall be directed to the Metropolitan: See 34 H. 6. fol. 29. Br. Ret. 118. & Dyer 153. And sede vacante of the Metropolitan, the Process shall be directed Gardiano Spiritual. Archiepisc. Dyer 77.

*Nota que sur issue al Common Ley de matter in fait, que est chose Spiritual, (come Bastardy, Excommungement ou tiel) le Trial sera per certificat del ordinary, & ceo son certificat fist fine del matter, & n'est traversable, 7 E. 4. 14. Co. 7. 14. & 9. 31. Finch. 141.*

*Mes pur matters spiritual, L'ordinary est le Officer al Court. que Certifie Excommungement, & tous spiritual matters doient estre fait per L'ordinary, et nemy per le Commissary, Archdeacon, ou aucun autre, coment que il ad un immediate jurisdiction, si non que il soit specialment admit un Officer a le Court, 8 H. 6. 3. 7. c. 4. 14. f. 238.*

Bastardy being pleaded in an Assize, a Writ went out to the Bishop to certify, &c. who certified the party to be Mulier, reciting the Writ word by word, but did not send the Writ with the Certificate, and for default of sending the Writ, the Certificate was adjudged void: 41 Ass. 19. Br. 81.

Excommu-

Excommunication being pleaded in disabling of the Plaintiff, it ought to be certified by the Bishop (who also is the immediate Officer to the Court) and such certificate ought to comprehend specially the cause of the Excommunication, &c. that the Judges may judge thereof, &c. But this may be pleaded (being shewed under the Bishop's Seal) without any Writ to the Bishop to certify the same: Co. 8. 68. & Lit. 201.

Also upon a recovery in a Quare impedit, the Writ goeth out sometimes to the Bishop of the Diocess, and sometimes to the Dean and Chapter (as Guardians of the Spiritualties, sede vacante Episcopatus) to admit or remove the Clerk, &c. Vide Dyer 241, 260, & 350.

*Et nota quant al choses spiritual, L'ordinary est le immediate Officer al tous Courts le Roy, sc. pur server le proces; le queux serra per L'ordinary, et nemy per son Commissary, Archdeacon, ou ascun (coment que il ad immediate jurisdiction) sil ne fait specialment admit un Officer al Court, 7 E. 4. 14. 12 E. 4. 15. 8 H. 6. 3. & Finch. 141.*

*Auxi pur matters queux concerne le Revenus del Roy, Lescheator de chescun County est L'officer al Chancery et Eschequer, a que tous le proces pur tel matters serra direct, Finch. 78. Co. 4. 57.*

Also in some cases the Constable or Lieutenant of the Tower shall receive and execute the King's Writs; as where the Writ is directed to the Sheriffs of London be fault, &c. By the Statute of 28 E. 3. c. 10. & 1 H. 4. c. 15. *Al Lieutenant del Tower.*

Sometimes Writs shall be directed to the Justices, &c. as Writs of Error to the Justices, &c. before whom the Judgment was given; And Writs of Audita querela, to the Justices before whom the Plaintiff is to have remedy: And Writs to the Justices to pass a fine of Land to be Amortised, Dyer 188. *Al Justices.*

*Thel. 107.* Sometimes Writs shall be directed to the Lords of whom the Lands are holden: Pl. 74. Sometimes to Stewards, Bishops, Baplifts, or Officers of Bishops, Cities, Boroughs or Towns, within which the Lands do lie. *Al Saigniors.*

As every Writ which concerneth any Freehold Tenant in London, ought to be directed to the Bishop and Sheriffs of London: But all other Writs which are at the Common Law within the same City, ought to be directed to the Sheriffs only, Old N. bre. 4. 5.

And sometimes Writs shall be directed to the parties themselves of whom complaint is made, as the Writs of Monstraverunt, de ne in justis vexes, de Estrepremento sometimes, and sometimes Writs of Prohibition, &c. Vide plus Dyer 241. pl. 48. & 266. pl. 8. *Al parties.*

*2 E. 3. c. 5. Cromp. 203.* Sheriffs and Under-Sheriffs shall receive all manner of Writs in any place, and at all times within their County, when and where soever they shall be delivered them, without taking of any thing other than such fees as the Law alloweth, and shall make thereof Warrant. *Delivery of Writs.*

And

And when a Writ is delivered to the Sheriff to execute, he ought to receive it, and not to deliver it to the party that delivered it to him back again, but must execute it, and then return the same into the Court from whence it came; for he is so commanded by the Writ; And if he doth not so, upon complaint thereof, the Court will set a fine upon his head, per Anderson, Ter. Patch. 36 Eliz.

An Exigent which was delivered of Record (to the Sheriff) was imbezelled, and the copy thereof was retourned by the Sheriff; And he was amerced for the return of the copy, at 30 l. and for the imbezelling thereof, at 20 l. 5 H. 4. fol. 5.

If any man doth fear the malice, indirect dealing, or negligence <sup>w. 2. c. 39.</sup> of the Sheriff, &c. in the execution of any Writ, they may deliver <sup>& 2 Ed. 1.</sup> Writs in the open County Court, or in any other place in the <sup>c. 5. P. Rent.</sup> County, and may take of the Sheriff or Under-Sheriff being present a Bill, wherein the names of the Demandants and Tenants mentioned in the Writ shall be contained, whereto upon request made by him which delivered the Writ, the Sheriff or Under-Sheriff shall put to their seal for a testimony, without taking any thing therefor, and mention shall be made therein of the day of the deliverance of the Writ: And if the Sheriff or Under-Sheriff shall refuse to put to their seal to such Bill, others that be present shall set to their Seal to such Bill for witness thereof.

*Nient Return.*

And if the Sheriff or Under-Sheriff make not a due return of the <sup>13 E. 1. 19.</sup> said Writs delivered or offered unto him, upon complaint thereof to the Justices of the one Bench, or of the other, they are to make a judicial Writ to the Judges of Assize, to enquire thereof, by vertue whereof the Justices of Assize shall have power to enquire thereby, by those that were present when the Writ was delivered, &c. And if the Sheriff be found in fault, then upon Return thereof into the Bench, &c. he shall be punished, and shall yield damages to the party grieved (having respect to the quantity and quality of the Action, and to the peril which might have chanced unto him by the delay which he suffered:) See the Book of Assizes, Lib. 29. pl. 58. Br. return de breve 72. & Officer 40. Abr. de Ass. 137.

Bea the Justices of Assize have power to enquire thereof at every mans complaint, and to award damages, ut supra, 2 E. 3. c. 5.

*Trade.*

Also by this means remedy may be had when the Sheriff shall not execute the Writ; or shall return untruly that the Writ came too late, whereby he could not execute the King's commandment, when as he had sufficient time to serve the Writ, 13 Ed. 1. cap. 39. Abr. d'Ass. 137.

*Faux Return.*

And the like remedy is given when the Sheriff, &c. shall make any other false return of any Writ (whereby right is deferred) and the offenders making any such false return, shall yield damages to the party grieved, ut supra, 28 E. 1. c. 16.

And so if the Sheriff shall return Mandavi ballivo libertatis, where there is no liberty, Kitch. Return 44.

Also

Also the like remedy is given, when the Sheriff shall Return too small issues, &c. Abr. d'Ass. 115. & 137. & 19 H. 6. fol. 8. *See hic postea Return of Issues.*

## CAP. XXI.

**A**LL Writs and Process directed to the Sheriff, are usually delivered to the Under-Sheriff, and executed by him, *Que executer.*

*Lamb. 91.* And yet the High Sheriff may execute them himself; Or the High Sheriff may command his Under-Sheriff, Bayliff, or other sworn or known Officer to serve or execute them, and such commandment of the Sheriff by word only is good, without any precept in Writing, *Keilw. 86. 9 E. 4. 48. 21 H. 7. 23.*

*21 H. 7. 23. 2.* But if the Sheriff will command another man (that is no sworn or known Officer) to serve or execute any Writ, Process or other Warrant, the Sheriff must deliver him the Writ it self, or else a Precept in Writing; otherwise an Action of false imprisonment will lie for the Arrest, *Lambert 91. 21 H. 7. 23.*

*Keil. 86.* And yet the Sheriff may command his Servant by word only (without any Precept in Writing) to serve or execute any Process, and it is good: And so any Stranger by the commandment of the Sheriff, and as a Servant to the Sheriff, may justify to serve and execute any Process upon the Body or Goods of another, or to seize the Goods of any person that is outlawed, &c. and that without any Precept or Warrant in Writing: *See Br. Faux. Impr. 43 & Trespass. 339.*

If the Writ or other Process cometh to the Under-Sheriff's hands, he must either execute it himself, or else must make his Warrant in Writing to the Bayliffs, and such Officers, and that in the High Sheriff's name: Or he may make such Warrant to any Stranger. *How to be executed.*

The Bayliff or other Officer to whom any Warrant shall be directed and delivered, ought with all speed and secrecy, to execute the same.

*Lamb. 91.* If the High Sheriff (or Under-Sheriff in the High Sheriff's name) upon any Writ or Process to them directed and delivered, shall direct their Warrant to their Bayliffs, or any other such Officer (to Arrest one, or otherwise to execute such Writ or Process) such Bayliff or other Officer must serve or execute it himself: For thele can command none other to do it neither by word nor Writing.

And so it cometh, if the High Sheriff shall direct his Warrant to his Under-Sheriff, the Under-Sheriff must execute it himself, and can command none other to do it.

Note, That none shall be arrested for Debt, Detinue, Trespass, or other cause of Action, but only by vertue of some Process, Precept or Commandment out of some Court.

*Uncore per le Custom de London, sur Pleint, ou Suit pur debt la enter devant les Viscounts, Les Serjants poient Arrest le Debtor per le commandement del Visc. (per parol tantum, sans aucun Process ou Precept in Escrip) de appear & respond. al mesme Suit; et ceo ils font per Prescription. Vide lib. Intrac. tit. Trespas in Process, div. 4. vide hicc. 22.*

*Note.* Note, That the Sheriff, Under Sheriff, Baplift, or other such Officer may (if need be) take posse comitatus, sc. what number of other persons they shall think good to execute any Writ, Process, or other lawful Warrant to them directed, and such as shall not assist them therein being required, shall make fine to the King. *See hic postea cap. 95.*

A Warrant directed (by the High Sheriff or Under Sheriff) to the Baplift, or other sworn Officer, and to a stranger (or special Baplift, who is no sworn or known Officer) and the Warrant is made to them, conjunctim & divisim, and is executed by the Stranger only, this is good.

A Warrant is directed to two men jointly to Arrest another, yet either of them alone may do it: Lamb. 91. Co. Lit. 181. Vide.

The forms of Warrants to be made upon mean Process: *See hic postea cap. 23.*

*Not to dispute  
the Authority.*

The Sheriff nor his Officers are not to dispute the authority of the Court, from or out of which they shall receive any Writ, Process, or other Warrant: But they at their peril are truly to execute all Writs, Warrants, Processes, and Precepts of the Judges, Justices, or Court to them directed, and that according as the same Writs, &c. shall command, in every behalf; and to this also they are sworn: And therefore whereas there was an information preferred in the Star-Chamber (termino Michaelis Anno 3 Jacobi Regis) by the Attorney General, against divers Serjeants of the Mace, and others, for arresting the body of Isabella Countess of Rutland, by force of a Capias ad satisfaciendum, upon a Judgment in Debt given in the Court of Common-Pleas against the said Countess; it was resolved for good Law (by Egerton Lord Chancellor, Popham and Gawdy Chief Justices, Fleming Chief Baron, and by all the Court of Star-Chamber) that the Sheriff, or his Officer by his Warrant, without any offence (of Law) might execute the said Writ upon the Body of the said Countess: And altho' it appeared in the Capias that she was a Countess (against whom by Law no Capias in such case lieth, Et quod ignorantia juris non excusat:) Yet for as much as in some cases, (as in cases of contempt, &c.) a Capias doth lie against a Countess (or against any Peer of the Realm, &c.) for that cause it was there resolved, that the Sheriff and his Officers or Ministers ought not to examine the judicial act of the Court, but ought to execute the Writ.

*Co. 6. 54.  
9. 68. & 10  
70. & D. &  
St. 150.*

And with this agreeth the Opinion in 36 H. 8. Dyer f. 60. that if a Capias (in an Action of Debt) or an Exigent, or a Writ of execution, shall come to the Sheriff against a Duke or Earl, &c. whereas it lieth not against such persons, yet the Sheriff ought to serve and execute such Writ or Process, and not to argue and dispute the validity thereof. *See Co. 9. 68. & 10. 70. & 76. b. accordant.*

*Capias*

*Capias ne gist vers Peer del Realm (in Action de Trespass, ou Debt, &c.) Mes vers un Chevalier gist: Car home poet estre Chevalier que n'ad Frankement, mes tantselement en un County. Mes si Peer del Realm (sc. Count, ou Baron) n'ad ascun chose in le County ou il est sue, le party Plaintiff avera un Elegit sur testatum in ascun County lou il ad Affets: Auxil sur contempt, come Rescous, ou tiel, Capias gist vers Peer de Realm, et ceo est pur le disturbance del Ley, 1 H. 5. 14. 26 H. 8. 7. 27 H. 8. 12. Finch. 103.*

*Auxil coment que le Corps d'un Peer ne serra prise sur Capias in Proces, pur ceo que le Ley intend que il ad Affets, &c. uncore semble que son Corps poet bien estre prise in Execution sur un Statute, sil n'ad biens ne rer. extendable; Car les parols del Statute Merchant fait, 13 Ed. 1. apres que ad done brief pur les terres, et bienz del Debtor, ad auxil ceux parols, et al darcin il avera brief a quel vicount il voile, de prendre son Corps si il soit lay, et de retainer. ceo, &c. per queux parols nul Noble home est exempt, s'ils sont lay homes; & issint les Justices semble de agreer in le case del Seignior Mountjoy, in Comuni Banco Anno 29 Eliz.*

Upon an Original Process for debt, trespass or the like, no Knight, nor Burgess of the Parliament, nor any of their necessary servants attending upon their Masters, during the Parliament, ought to be arrested: Neither shall any of their goods or chattels necessary, be attached or taken by any Sheriff or other Officer (except it be in case of Treason or Felony.) Crompt. author. des Courts, fol. 11.

A Knight or Burgess of the Parliament, nor any of their necessary servants or attendants shall not be arrested upon a Writ of Execution, or the like; And if any such privileged person shall happen to be taken upon an Execution, during the Session of the Parliament, they shall have the privilege of the Parliament; and the Sheriff may, nay ought to deliver such prisoner, being sent for by the House: But yet upon a Capias utlagatum, they may be arrested, during the Session of the Parliament. See plus hic cap. 22. & 126. & 29.

Clergy-men called to the Convocation, &c. and their Servants, shall have the Privileges, eundo, morando, & redeundo, which the Peers and Commons of the Realm in Parliament have, Stat. 8 H. 6. cap. 1 Finch. 140.

But if any Writ or Process shall be delivered to the Sheriff, against any of these persons thus privileged, or against their goods, and the Sheriff or his Officers shall execute the same, and after shall readily deliver the party again, or his goods (so taken) when he shall receive any Writ of Privilege, or other Command from the House of Parliament so to do, quere if this shall not excuse the Officer; or that the Execution of such Process upon such privileged persons be altogether unlawful; it seemeth no excuse, See hic c. 126.

Dyer 60.

And yet a Burgess of the Parliament was taken, arrested, and imprisoned by the Sheriff upon a Writ of Exigent, which issued upon a Capias ad satisfaciend. and after a Writ of privilege was granted from the Parliament; whereupon the Sheriff let the prisoner go at large; and it was holden that the privilege was grantable, notwithstanding the execution; for that the King and the Realm have interest in the body of every Burgess (and other member of the Parliament

and the Common-wealth shall be preferred, and the party may be afterwards taken in execution again: But admitting that a Writ of Privilege had not been grantable in this case, yet it was holden that the Sheriff should not be charged for such his letting of the Prisoner go, he being commanded thereto by Authority of Law, and not done of his own head only; and besides, he is bound to execute all process of Law, as well by his Oath, as by his Office: And the Sheriff is not bound to take notice of the Law; for the Law intends him to be a Lay-person, and not to have knowledge of the Law: So that whereas a Writ shall come to him by authority, or without any authority, he may not argue or dispute it: And therefore if a Capias shall come to the Sheriff without any original, and he shall serve it, he is excusable in an Action of false Imprisonment; for the Sheriff being the Officer and Minister of the Court, it shall be against reason to punish him for executing the Process and Commandment of the Court; and the rule is, Quicumque jussu Judicis aliquid fecerit, non videtur dolo malo fecisse, quia parere necesse est, Co. 10. 70.

Vide 1 Jac. c. 13. P. Execut. 4.

\* Yet in some cases the Law is otherwise: See fol. sequent.

If the Court or Justices shall award a Process to the Sheriff, to arrest or take another without cause, and the Sheriff (or his Officers) shall thereupon arrest him, the Sheriff nor his Officers are not punishable for this; yea, although the Justices shall after amend their Process; yet the Sheriff, &c. shall be discharged, 20 H. 6. 5.

And yet this difference is to be taken: sc. When a Court hath jurisdiction of the cause, and shall proceed in verso ordine, & erroneously, there the Officer or Minister of the Court, which shall execute the Precept or Process of the Court, is excusable, so as no Action will lie against him: But when the Court hath no jurisdiction of the Cause, there all the proceedings is coram non Judge, and therefore there an Action will lie against the Officer, without any regard had of the Precept or Process of the Court: And as to the former Rule, Quicumque jussu Judicis aliquid fecerit, non videtur dolo malo fecisse, quia parere necesse est, the Law well alloweth thereof; But when he hath not jurisdiction of the Cause, non est Judex, and it is not of necessity to obey him who is not Judge of the Cause, no more than it is to obey a mere stranger; for another rule is, Judicium à non suo Judge datum, nullius est momenti; And accordingly in 22 Edw. 4. fol. 33. Pigott saith, That if the Court hath no power and authority (in the Cause) then their proceeding is coram non Judge.

Co. 10. 76.

*Come si les Justices del Court del Common Pleas, sur preier d'ascun person, hors de leur Court, fera ascun Process de Arrest un auter pur surety de le Peace; ou deins leur Court fera ascun tiel proces de arrest le party deins le County, lou le Court de Common Pleas est, ou de arrest un pur trove surety del Peace, que nest present in Court, ne deins leur view, semble que l'Officer nest de server ou execut. tiel proces, pur ceo que leur authority in tiel cases, est tantum deins le precinct de leur Court.*

*Issint si les Justices de Common Pleas voil tener plea de Appell. &c. Vide Keilw. 106.*

*Issint si les Justices de Common Pleas, ou d'ascun auter Court, grant ascun Precept, &c. concernant ascun auter choses, de que ils ou leur Court n'ont Jurisdiction.*

*Issint*

*Issint quant un action est commencee devant un Judge, sil soit Judge de ascunt parcel de ceo que est sue devant luy, le judgment n'est my void, pur ceo que de parcel il avoit power de tener Plea: Mes lou le Judg tient Plea de tiel matter, que de nul part il avoit power, et done Judgment sur ceo, est come un void Judgment in Ley; et donque chescun que est fait per cause de cel, est un Trespass ou dissein. come le case est, Keil. 106.*

Also by the Book 22 Ass. pl. 64. it is holden, that where an Erroneous Judgment is given in any Court, the Officer which maketh Execution is excused: But contrariwise, where the Court giveth Judgment of Land, contract or the like, which lieth out of their Jurisdiction, as where an Action is brought in a Court of Land, which lieth out of their Jurisdiction, or of a contract which was made out of their Jurisdiction, and the Demandant or Plaintiff recovereth and hath Execution, there an Assize or an Action of Trespasse will lie against the Officer, &c. which maketh the execution; for all the proceeding is coram non iudice, Vide tiel matter Keil. 106.

Webb versus Bachelor & versus Pas, 29 Car. Secund. di Regis in Banco Regis, sur special Verdict.

Also by the Book 14 H. 8. 16. if a Justice of Peace shall make a Warrant to Arrest one for Felony who is not indicted, the Justice doth err in the granting of such a Warrant; and yet if the Bayliff, Constable, or other Officer shall serve such a Warrant, this is a good justification of the Officer in an Action of false Imprisonment (notwithstanding the Justice did err in making the Warrant) for the Justice of Peace is a Judge of the Cause.

*Mes si Justices de Peace Arreign un home de Treason (a le Sessions) que est trouve culpable, et sur ceo pendus, ceo est Felony, cy bien in les Justices, come in le Vicount, (ou autre Officer) que luy suspend. Car les Justices de Peace n'ont Authority in ceo; mes s'it coram non iudice: Mes si les Justices de Peace Arreign home de Felony, sur un Indictment de Trespass, sur que l'offender est pendus, ceo est Felony in les Justices, mes nemy in le Vic' ou Officer, que luy pend, pur ceo que les Justices de Peace ont Authority et Jurisdiction in ceo darein case.*

14 H. 8. 16.

The same Law is where the Sheriff doth err in his Warrant directed by him to the Bayliff of a Franchise, or to his own Bayliff, Br. Faux Imprif. 8.

24 E. 3. 9.

So upon a Commission from the King granted out for the arresting of any person, tho' it should be against the Law, yet the Commissioners, or those to whom the Commissions shall direct their Precept or Warrant (for arresting of any such person) may execute and justify the same. Br. Faux Imprif. 29.

But upon an Action of false Imprisonment, where the Defendant justifieth, as Sheriff of C. and that he arrested the Plaintiff by force of a Capias, &c. this is a good Plea, so as he pleadeth that this was the same Imprisonment, Br. Faux Imprif. 29.

And so note that in some cases the Sheriff or other Officer is bound at his peril to take knowledge of the Law; as in the cases aforesaid, where the Court, Judge or Justice having no Jurisdiction of the Cause, shall grant out any Process, Writ or Warrant, &c. and the Officer shall execute the same, &c. for in such cases, Ignorantia juris non excusat ministros Legis.

*The Officer to take knowledge of the Law.*

Un fuit attainé de disseisin ove force, par que Exigent issuint, quel brief le Vic' retorn, & que le Roy luy maund per brief soubz son Privy Seal que il avoit luy pardon le Trespass & Imprisonment, & command que ne soit endamage pur ceo cause, & issint adrien fait pur reason de ceo commandment le Roy; & retorn auxi le brief le Roy; & pur ceo que cel brief doit aver estre maunde al Justices, & ils doient aver command le Vicount que il surcessera, Ideo le Vic' fuit amerce, & novel Exigent agard. Car le vic' ne poet per nul brief (per le Ley) surcesser, forsque per garrant del Court, ou Lieu, hors de quel il avoit le Commandment, Quod nota 14 E. 3. Fitz. Ret. de Vic. 89. & 4 E. 4. f. 17. Plus hic c. 29. & 59.

Also if a Writ de homine replegiando cometh to the Sheriff Fitz. 66. f.  
(which Writ commandeth the Sheriff to make deliberance of the Body, except the prisoner be in, per speciale præceptum nostrum, vel capital. Justic' nostri, vel pro morte hominis, vel pro foresta, vel pro aliquo alio recto, quare non sit replegiabilis :) yet the Sheriff shall be amerced if upon that Writ he delivers a prisoner which is in for Redisseisin, without special commandment. *See Statute Marl. c. 8. Fitz. Natura Brevium* 189. c. Dyer 60, 61.

And so of a Prisoner (or an Accomptant) found and condemned in West. 2. c. 11.  
Arrearages before Auditors, and committed by them to Prison, if the Sheriff or Gaoler shall deliver him upon a Writ de homine replegiando, or otherwise, without the assent of his Master, it is an Escape, and the Sheriff, &c. shall pay the Debt, &c. whereas at the Common Law before this Statute of Westm. 2. the Master had no remedy, but his Action sur le case.

The words of this Statute of Westm. 2. to this purpose, are thus, Sit hujusmodi incarcerationis irreplegiabilis (sc. sans licence ou assent le Seigneur.) Et caveat sibi Vicecomes, vel custos ejusdem Gaolæ (sive sit infra libertatem, sive extra) quod per Commune breve quod dicitur Replegiare, vel alio modo, sine assensu domini, ipsum à prisona exire non permittat, Quod si fecerit, & super hoc convincatur, respondeat domino de dampnis per hujusmodi servientem sibi illatis, secundum quod per patriam verificare poterit, & habeat dominus remedium suum recuperare per breve de Debitoverfus custodem. Et si Custos Gaolæ non habet per quod Justificetur, vel unde solvat, respondeat superior suus, qui custodiam hujusmodi Gaolæ sibi commisit, per idem breve: Et nota que il serra charge de tant que l'accomptant fuit trouve in Arrearages devant les Auditors.

Et uncore sur brief de ex parte talis, returnable in l'Eschequer, le Vic' poet deliver tiel Prisoner, ou poet Bail luy, accordant come le brief serra, vide Dyer 61. & Fitz. 129. g. i. & 130. a. Mes nota que le Surety in Ley ex parte talis serra al profit le Roy (& les mainpernors serra oblige sur un pain, que ils luy garder sans jour, &c.) mes le Seigneur semble icy sans remedy, cy bien vers le Vic' ou Gaoler, come vers le Bailly: Car le Vic' ou Gaoler est discharge per ceo brief le Roy; & le Bailly luy discharge adire que il auter fois accompt devant Auditors assignees, &c. & monstre tout le matter, & que il fuit comit al prison, & ceo matter monstre discharge le Bailly; tamen quere inde.

Auxi nota que le surety que serra prise sur brief de ex parte talis, poet estre prise in le Chancery, ou in le Eschequer; Et in aucun case serra prise in le pais, per ou devant le vicount, Fitz. 129, 130. & Old Nat. Bre. 60.

*Mes nient obstant que ceo Stat. de Westm. 2. voet que le Accomptant ne serra mise al Bail per breve de Homine Repleg. vel alio modo, uncore semble que ceux parols serra prise strict. Car sil ad Priviledge del Parliament, ou soit d'estre execute pur Treason ou Felony, ou forsque d'estre arreigne de ceo, il serra deliver, & le Vic<sup>3</sup> & Gaoler serra discharge.*

*Mes semble que il nest plee pur le Vic<sup>3</sup> ou Gaoler, adire que il lessa le Bailly de aler per assent del Seignior sil ne monstre fait le Seignior prouvant cel assent.*

*Auxi si le Accomptant soit sue, & soit utlage, & apres il est prise & mise en prison en le gaole, donque il est replevisable, Old. Nat. br. 58.*

As for the King's Protection granted to any of his Subjects by <sup>Protection.</sup> his Writ, whereby any immunity or freedom from Actions, Suits or Arrests shall be given to any of them; it is to be noted, That the Courts of Justice where any such Protection is cast, are to allow or disallow of the same, (be they Courts of Record, or not of Record;) But the Sheriff nor any other Officer or Minister are to allow or disallow the same, Co. Lit. 131. a.

Also note, That by the death of the King, the authority of the Sheriff, and of all his Officers, both determine and cease, vid. hic c. 2.

But yet by the Statute 1 Ed. 6. c. 7. it is provided that by the death of the King, no Action, Suit, Bill, or Complaint depending between party and party, in any Court of Record, shall in any wise be discontinued, &c. So that now, if any Judicial Writ or Process in any Court of Record be awarded in the time of the present King, this now may be executed by the Sheriff, or his Officers, in the time of the succeeding Prince, &c. Vide Co. 7. 30, 31.

## C A P. XXII.

## The Officers Duty.

21 H. 7. 23  
a.

**T**he Sheriff or other Officer to whom any Writ or Warrant shall be directed and delivered, ought with all speed and secrecy, to execute his said Writ or Warrant according as the same commandeth: And besides, he is bound to pursue the effect of his Warrant in every particular, or otherwise his Warrant will not excuse him.

In an Action of Debt, Trespass or the like, where the Sheriff is to Summon or Attach, or Garnish the Defendant, he must do it presently; and therefore, if in such cases the Sheriff shall return Nilil habet, without saying Nec habuit die receptionis brevis, or nec habuit post receptionem brevis; yet it shall be intended that the Sheriff endeavoured the Execution thereof presently, i. e. the day of, or presently upon the receipt of the Writ. See hic c. 56. & 77.

Note

*Note, That Writs concerning Common-Pleas, are some real, and some personal; and they both again, are either Præcipes, or else Si fecerit te securum.*

Præcipes are of two sorts, *sc.*

1. Præcipe quod reddat, which lieth for things in render, as of Land, Rent, &c. or Money, Goods detained, and the like.
2. Præcipe quod faciat, or quod permittat, as the Writ de Consuetud. & servitiis, Sect. ad molendinum, &c.

And upon these Præcipes, the Sheriff is to command the Defendant to do somewhat in certain which the Plaintiff sueth for, which if he do not, then the Sheriff is to serve the Process.

But upon a Si fecerit te securum, the Sheriff is to serve Process without more ado, Finch. 257.

If the Defendant doth the thing commanded by the Præcipe, yet the Sheriff is to serve the Process, and to make return thereof as it semeth, *Sc* hic c. 56. 70.

*Shew the Warrant.*

A sworn and known Officer (be he Sheriff, Under-sheriff, Baplift <sup>Co. 9. 69.</sup> or Serjeant) needs not to shew his Warrant or Writ, when he cometh <sup>21 H. 7. 23.</sup> to serve it upon any mans Person or Goods, altho' the party de- <sup>& 37.</sup> mandeth it: But a special Baplift, or other person who is no sworn and known Officer, must shew their Warrant to the party, if he demands it, or otherwise the party may make resistance, and needs not to obey it.

And so of the Sheriffs servant, or Under-sheriffs servant, being no sworn Baplift, they cannot Arrest a Man without shewing their Warrant, if it be demanded.

And yet no special Baplift is bound to shew his Warrant without demand thereof, 8 E. 4. 14. 14 H. 7. 9. Co. 9. 69.

But every Baplift and other person that will justifie the imprisonment of the Body of any other, by force of any Warrant, must shew the same Warrant in Court, &c. And therefore it behoveth all Baplifts, and such Officers, to keep safely by them all such their Warrants. <sup>Co. 10. 92.</sup>

*Or declare the contents.*

A sworn and known Officer, if he will not shew his Warrant <sup>Co. 9. 68.</sup> to the party (as he needs not) yet upon the Arrest the Officer ought <sup>69. & 6.</sup> to declare the contents of his Warrant, (*sc.* at whose suit he maketh the Arrest, for what cause, out of what Court, and into what Court, and when it is returnable) to the end, that if it be upon an Execution, the party may pay the Money, and so free his Body from Imprisonment; and if it be upon mean Process, that the party may either agree with the other, or else that he may put in Sureties and Bail for his appearance according to Law, and to know the day of his appearance. <sup>54.</sup>

But this (*sc.* that the Officer upon the Arrest ought to declare the <sup>Co. 9. 69.</sup> contents

contents of his Warrant (ut supra) must be understood, when the party arrested, or to be arrested, shall yield and submit himself to the arrest, and not when he maketh resistance or flyeth.

Co. 9. 69. b. Note, where our Law Books or Statutes do speak of a known Bayliff or Officer, they are not to be understood (neither is it needful) that such Bayliff or Officer be known to the party, who is to be arrested, but if he be so commonly known, it sufficeth.

Co. 9. 69. And an Officer giveth sufficient notice what he is, when he saith to the party, I arrest you in the King's name; and in such case the party at his peril ought to obey him, tho' he knoweth him not to be an Officer; and if he have no lawful Warrant, the party arrested may have his action of false Imprisonment against him.

If the Sheriff or Officer cometh to arrest a Man, and he flyeth, the Officer may pursue him, and take him, though in another County; but may not beat, strike or assault him, for that he was not arrested; but if he were arrested and then flyeth, and draweth any Weapon, the Officer may justifie to Assault, Batter and take him again, 2 E. 4. 7.

14 H. 8. 16 If any Officer do arrest a Man before that he hath any Warrant, and then afterwards doth procure a Warrant (or a Warrant cometh after to him) to arrest the party for the same cause, yet the first arrest was wrongful, and the party grieved may have his Action of false Imprisonment against the Officer: Br. Faux Imprisonment 8. Sans warrant.

A man condemned in Debt, at the request of the Factor of the Plaintiff, was arrested by the Sheriff for the Debt, without any Writ or Warrant, and being in the Sheriff's custody, the Sheriff and the Plaintiff's Factor do procure a Capias ad satisfac. against the prisoner for the Debt, and by vertue thereof the Sheriff arresteth the prisoner again, and brings him into the Court at the day of the return, &c. and all this matter being disclosed to the Court, and found to be true, the Defendant would have been discharged, but yet he was committed to Prison in Execution for the Debt (for that the Plaintiff was himself particeps criminis in this undue arrest.) And the Sheriff was amerced at 10 l. and the Factor at 5 l. And besides, for the wrong to the Defendant he may have his Action of false Imprisonment against both the Sheriff and Factor of the Plaintiff, Dyer 244. See other like cases, Dyer 241, 242. & 16 E. 3. Fitz. Bar. 248.

If a Serjeant in London shall attach a man before the Suit or Plaint be entred, an Action lieth against the Serjeant: And so is it if the Sheriff, or any other Officer, shall arrest any man before their Warrant come to them; and it is not excusable although that the Warrant comes to them afterwards.

43 Eliz. c. 6 If any Sheriff, Under-sheriff, or other person have authority, or taking upon him to break up writs, do make any warrant for the summons of any person, as upon any writ, process or suit; or for the arresting or attaching of any person or persons by his or their body or goods, to appear in any His Majesties Courts at Westminster, or elsewhere, not having before that the original writ or process warranting the

the same, upon complaint thereof made to the Judges of Assize of the County where the offence shall be committed, or to the Judges of the Court out of which the Process issued, as well the party that made such Warrant, as also those that were the procurers thereof, shall be sent for by the same Judges, and be thereof before them examined upon Oath; and if the same offence shall be confessed by the offenders, or proved by sufficient Witnesses (to the satisfaction of the same Judges) the same Judges shall forthwith commit every of the same offenders to the Gaol, there to remain without Bail until they have paid (amongst them) ten pounds unto the party grieved, and such costs and damages as the same Judges shall see down, that the party hath sustained thereby, and withal twenty a piece to the King for their said offence.

And yet where a Capias, &c. shall go out to the Sheriff without an original, and he doth execute and serve the same, an Action of false Imprisonment will not lie against the Sheriff, for it was not his fault, by Hank. 11 H. 4. 36. Neither is the Sheriff bound to take knowledge whether this be of Record or no: Yea, the arrest thus made by the Sheriff is good, so that if the party shall make a Rescous, he shall be therefore punished; for the Capias was a sufficient Warrant to the Sheriff, M. 38 H. 8. 12 H. 7. 14 b. & 21 H. 7. 22. b.

Br. Faux  
Imprison-  
ment 31.

*Si le vic. escry al Bayliff del Franchise in tiel form, Ballivo libertatis, &c. salutem, Mandatum Domini Regis recepi in hac verba, et reberse coment le Roy command per brief de prender le Corps d'un tiel, lou nul brief vient al vic. ceo est bon excuse al Bayliff del Franchise, et le party avera son remedy vers le vicount.*

Un Attorney avoit fait un Capias direct al vic. ou la fuit nul original per que l' Attorney fuit mise al Fleet, et apres son nosme fuit treet hors del Rolls de Attorneys, &c. Vide 10 H. 6. 37.

Two men of one  
name.

Where there be two or thre known by the name of J. S. and upon Process granted out against one of them, the Officer arresteth anyther of them (where it is not the Defendant) or Attacheth the Goods which are not the Defendants Goods, the Officer shall be Trespasser; quare tamen & vide hic c. 61. and if the Plaintiff had shewed the Officer the wrong man or goods, and had told him that that had ben the Defendant, or those had ben the Defendants goods which were not, there both the Plaintiff and Officer are trespassers; but it is otherwise upon such information, in making of the view of Land, for that is neither seisin, nor an arrest.

11 H. 4. 96  
Br. Officer  
8.

And yet the Opinion of the book in long 5 E. 4. fol. 51. (Br. Faux Imprif. 19. & Ident. Nom. 6.) where there be two or thre known by the name of J. S. Peoman in D. and one of them is sued, and a Capias is directed out to the Sheriff, &c. and the Sheriff taketh another of them, an action of false imprisonment will not lie; for that he that is so taken is named in the Capias, and therefore hath no remedy, but by a Writ of Identitate Nominalis: But the contrary is holden in the same Book, and pear, fol. 84. sc. that in the former case, an Action of false imprisonment doth lie against the Sheriff, &c. for that the Sheriff (or Officer) is to take notice at his peril, which of them it is that is sued. And therefore it seemeth safest for the Sheriff in such cases

cases to make his Return, that there be divers of that name and surname within his County, &c. and that therefore he knew not upon which of them to execute the Writ, Vide hic cap. 61. such a Return.

Where a Warrant is granted out against J. N. the Son of W. N. and the Officer thereupon arresteth J. N. the Son of T. N. altho' in truth he be the same person that offended, and against whom the complaint was made, yet this Arrest is Tortious, and the Officer subject to an Action of false Imprisonment, See the like matter 10 E. 4. f. 12. Br. Faux Imprif. 38.

Crom 214. If the Sheriff, &c. arresteth one upon a Capias, and after returns Non est inventus, an Action of false Imprisonment lieth, &c.

If an Officer hath arrested a Man by virtue of a Capias, or upon a Lacitar, and then giveth him a day to come to him again with Sureties to be bound for his appearance, &c. and so the Officer letteth the party go, who comes not again at his day appointed, here it seemeth that the Officer cannot take his Prisoner again by virtue of his former Writ or Warrant, for that the Officer gave the Prisoner leave, &c. As where a Man is in Execution for Debt, and the Sheriff or Gaoler licenseth him to go at large for a time, and then to return, or to go by Bail or Baston, and he cometh again at the time, yet this is an escape; and so it is adjudged in Boynton's Case, Co. 3. fol. 44. and in Ridgeway's Case, Co. 3. f. 52. But if the party arrested (or the prisoner) had escaped of his own wrong, without the consent of the Officer, then upon fresh suit made, the Officer may take him again and again, so often as he escapeth, altho' he get out of view, or that he shall fly into another County, See Br. Faux Imprif. 18. & Br. Escape 4. 12. & lib. Intrac. tit. Faux Impr. div. 10. Escape.

Cromp.  
205. b.

If an Officer shall Arrest another by force or virtue of a Warrant of the old Sheriff, after the Sheriff is discharged, &c. an Action of false Imprisonment will lie both against the Sheriff and against the Officer for such an Arrest. Warrant of the old Sheriff.

*Issint lou ascun que n'ad Authority fera un Precept al Officer de Arrest auter, et sur ceo l'Officer Arrest le party, le Action gist cybien vers le Judge, &c. que fera tiel precept, come vers le Officer que cest Execte.*

2 H. 7. 2.  
Br. Rector.  
83.

If a man be taken and imprisoned upon a Warrant from a Justice of Peace in the County, for surety of the Peace, or for some Riot or Forcible Entry or the like, and after a Capias cometh out of the King's Bench or Common-Pleas, &c. to the Sheriff to Attach or Arrest the same person, and the Sheriff upon the Capias returneth all this (and bringeth the prisoner into the Court) yet the prisoner shall first answer to the Plaintiff, and after his answer put into the Court he shall go under Bail, and then be remitted or sent back by the Sheriff into the County, there also to make his answer before the Justices of Peace; so that the Sheriff upon a Capias to him delivered to Attach or Arrest such a Prisoner, formerly committed to the Gaol by the Justices of Peace, is to bring such Prisoner into the Court upon the Capias, as it seemeth. To arrest one that is arrested before.

Escape.

Note, That when a man is in the custody of the Sheriff by Process of Law (or by force of any lawful Warrant, except for Criminal matters) and after another Writ is delivered to the Sheriff to take the body of him that then is and was in his custody before, notwithstanding presently is that prisoner in the custody of the Sheriff by force of this second Writ; and in such case if the Sheriff shall refuse to take the second Writ, or shall not keep the prisoner thereupon, it is an escape in the Sheriff; and so the Sheriff in this case must be answerable for his prisoner, altho' he do not Arrest him by the second Writ.

Where the Defendant being taken at the King's suit upon a Capias utlagat. or upon a Capias pro fine, shall be presently in execution for the Plaintiff. *Scilicet hic postea tunc. Executio sur Capias ad satisfactum.*

What persons may be sued and Arrested, what not.

Note, That the Person of the King is so sacred, that no violent hands may in any case be laid upon him; Neither may he be impleaded or sued by Action, as a common person may: But wherefore the King shall seize any man's Land, or take away any man's Goods (having no title by order of his Laws so to do) the Subject for his remedy in all such cases, is driven to sue unto his Sovereign by way of petition only, for that no Action lieth against the King, *Stamf. de Prærog. 42, 72, 73. Vide plus f. 255.*

Noble men, where they may be arrested, *Scilicet hic c. 21.*

Knights and Burgesses of the Parliament, (nor their servants) may not be arrested, *ibid.*

Necessary Officers which attend upon the Parliament (as the Serjeant at Arms, the Porter of the Door, Clerks and the like) shall not be arrested for Debt or the like, during their attendance, *Crompt. Author. des Courts fol. 11.*

But note, That the Parliament doth give no Priviledge tempore vacationis, sed sedente Curia, 2 E. 4. f. 8. Br. Priviledg. 56.

And such persons whose attendance is necessary in any of the King's Courts at Westminster, shall not be arrested: As the Judges, or any of their necessary Servants or Ministers of the Court, *Crompt. ibid.*

If any Officer, Clerk or Attourney of any of the four ordinary Courts who ought to be attendant to the Court, shall be arrested, during the time of their attendance, they shall have a Writ of Priviledge, *Dyer 287.*

Every other person who hath any suit in any of the King's Courts at Westminster shall be discharged of any Arrest, either of his Body or Goods which are necessary for the maintenance of the suit; *mes ceo ferra per brief de priviledge que ad en luy un Superfedeas, Finch. 52.*

Concerning Ecclesiastical persons *Mr. Bracon, lib. 5. cap. 32. saith thus, Excusari poterit vicecomes propter privilegium clericorum, ut si præceptum Domini Regis habuerit de attachiando aliquem qui clericus sit,*

fit, & qui plegios invenire noluerit propter privilegium clericale, nec laicum feodum habuerit, per quod possit distringi, nec debet dominus Rex manus in eos mittere, &c. Nullum aliud superit remedium, nisi quod ex parte Domini Regis mandetur Ordinariis loci, sicut Episcopis, &c. quod faciant talem Clericum venire ad talem diem, nisi forte testatum est quod talis Clericus habet laicum feodum, & Catalla in laico feodo per quæ distringi possit, & vicecom. per fraudem mandaverit quod nihil habuerit, in quo casu vicecom. in man. Domini Regis remanebit, &c.

Herewith other Books do agree, sc. that the Bodies of Ecclesiastical persons were not to be arrested in Suits between them and other Subjects; and therefore in cases of Debt, Trespas, and the like, Venire fac. Clericum was awarded 32 H.6. 11. per Prisor, (otherwise it was in cases of felony, or for Contempts, See 21 E. 3. & 10 H. 4. Fitz. proces 50. 198. & Fitz. 131. a. 266. a. b.

But where the first original Proces is to Attach or Distrain the Defendant, there if he be a Clerk, he must be summoned by his person, or by his Land if he hath any lay fee, Finch 135. and yet in Debt, Trespas, and the like cases, where a Capias lieth, there it seemeth a Capias is awarded against them of common course, and then their Bodies may be arrested, &c.

And note, That every Subject of this Realm for any injury done to him, in his Goods or Lands, or to his person, may sue any Subject, be he bound or free, Woman or Infant, Religious person, or be he Outlawed, Excommunicated or any other without exception; for by the Statute of Mag. Chart. c. 29. Nulli negabimus aut differemus justiciam vel remedium, Dyer 104.

By which words now every man for any injury or wrong done to him, may have a Writ of course in the Chancery against any other Subject, without suing to the King for it; and without any fine to be made for it, Dr. & St. 18.

But if any of the King's Officers, or other person, do Arrest any Minister or other person, which is doing any Divine Service in the Church, Church-yard, or other place dedicated to God, he shall be imprisoned and punished at the King's pleasure, and further shall recompence the party arrested, but no people of the Church shall keep them within the Church by fraud or Collusion.

*The place.*

And yet the Sheriff or other Officer may serve Proces, and execute the King's Writ within the Church, so that it be not done to the disturbance of Divine Service. See 6 H. 4. fol. 3. & hic Return de Sanctuary fol.

Note, That Dies Dominicus non est juridicus: so as the King's Courts may not sit, or hold Plea upon that day, Co. Lit. 135. a.

Also upon a Recovery the Sheriff may not deliver seisin upon the Sunday. So upon a fine levied with Proclamation, if any of the Proclamations be made upon the Sunday, all the Proclamations are Erroneous.

50 E. 3.  
c. 5. 1 R.  
2. c. 15.  
See Stat. 1.  
Ma. cap. 3.  
By a Statute made  
in 29 Car.  
2. all Arrests upon  
Sundays  
are made  
void, the  
Offenders  
punishable.

And so a Scire facias out of the Common Place, bearing date oʒ teste upon a Sunday, it is Erroʒ, Vide plus Fitz. 7.

*The Time.*

Also the Sheriff oʒ his Officer might formerly have made an Arrest, oʒ executed any Proces, oʒ done any other ministerial act upon the Sabbath day, and that as well at the suit of a Subject, as at the suit of the King; foʒ the Officer of Justice ought to execute his Office whensoever he can find the party; otherwise peradventure they shall never execute their Office, noʒ arrest him, quia qui male agit, odit lucem; and if the Officer shall not arrest him when he findeth the party and may arrest him, the Plaintiff shall and may have his Action of case against the Sheriff oʒ Officer, and shall recover in damages, whatsoever he loseth oʒ is indamaged thereby. But Nota, The Law is now altered by the Statute of 29 Ca. 2. which 29 Ca. 2. prohibits Arrests upon the Sabbath day.

*Night.*

And yet the Sheriff, noʒ his Officers ought not to break open any Mans house in the Night-time, to execute any Proces, oʒ to do any other ministerial act: Foʒ the Law giveth no colour to break a Mans house by night, Fitz. Just. of Peace, f. 10. b. foʒ this last.

And yet the breaking of a house in the Night-time, foʒ the apprehending of Traytoʒs oʒ felons, being therein; oʒ foʒ the arresting oʒ pacifying of Affrayoʒs, and keeping of the King's Peace, sameth to be justifiable. Also summons in a Præcipe, may not be in the night, hic cap. 31.

Upon a Capias oʒ Latitat, &c. the Sheriff may Arrest the Party the same day in which the Writ is Returnable, (oʒ upon the day of appearance:) yea, if after the day of the return of the Writ, and day of appearance before the fourth day, the Sheriff doth Arrest the party, it is good, because the first, second, third, and fourth days, be all as one day; and so was the better opinion of the Book 33 H. 6. fol. 45, 46. sc. that if any man was arrested after the first day, it was good; foʒ that no appearance shall be before the fourth day; neither is any man demandable at the first day (except in a Writ of Right) neither shall any man be received to plead in any case, before the fourth day; yet the very day of return is the day in Law, and to that day the Judgment hath relation, but no Defendant shall be recorded till the fourth day be past, Co. Lit. 135. a. sed quære de hoc.

I have sen the report of a Case betwix May and Hopper, Anno 2 Jacobi Regis Rot. 279. to this purpose; A Latiat was directed to the Sheriff to Arrest Hopper, Returnable die Lunæ prox. post Crast. Sanctæ Trinitatis (which that year was the tenth day of June) and the Sheriff upon the same day, sc. the tenth day of June, did Arrest Hopper, and took a Bond of him the same day, bearing day the same day, with condition to appear Coram Dom. Rege, die Lunæ proxime post Crast. Sanctæ Trinitatis respond. &c. After the Sheriff brought an Action of Debt upon this Obligation, and the Defendant prayed Oyer del Oblig. &c. and then pleaded all this matter aforesaid, and the Plaintiff did demur; and it was agreed by Fenner and Yelverton Justices, that upon the same day in which the Writ was returnable, and which was the day of appearance, the Sheriff might well enough arrest the Defendant: but the doubt in this case was, what day should be understood by the day mentioned in the condition (being the same day upon which the obligation was made) foʒ that there were

were no words of proxime sequente. Now whether it should be taken for the day whereupon the Obligation was made, or for that day twelvemonth, was the question, but it was not resolved.

*Sic nota que sur jour done per Proces, le quel est tous foits le Common jour, (& nemy certain jour come Lune, Martis, &c.) le quarto die post est allow pur le jour del appearance; & issint sont tous les Entres, Obtulis se quarto die post; & pur ceo lou le brief est de appear, &c. in Octabis Sancti Hillarij (ou ascun autre tiel common jour de Return) la le party poet appear quarto die post, & a cel intent, le premier jour, et le quart jour et tous les jours mean, sont forsque sicome un jour in Ley (auterment pou le jour done per Proces, est jour certain come Lune, &c. ut supra, la est jour del appearance.) Vide 12 H. 4. 24. 1 H. 6. 4. Fitz. 25. c. Br. jour in Court 57. Finch. fol. 63. Co. Lit. 134. b.*

C A P. XXIII.

Warrants upon mean Proces.

**N**OW for that the Sheriff having all Writs and Proses directed unto him, as aforesaid, and yet it being a thing impossible for him to execute them himself, i. e. for him to do execution of all, therefore the Sheriff (or his Under-Sheriff, to whom such Proses usually are delivered) are to make out Warrants to their Bailiffs or other Officers, for the execution of such mean Proses.

*Warrants sur  
mesme Procest.*

And these Warrants must be made according to the several natures of the Writs, which for the substance will direct them therein.

And yet the Sheriff may Arrest a man, when he hath a Writ, without making any Warrant; and so may his Servant (or any other person by the Sheriff's commandment) where the Sheriff shall deliver him the Writ, 21 H. 7. 23. a.

But if the Proses cometh to the Under-Sheriff's hands, he must make out the Warrant in the High-Sheriff's name.

*The form of a general Warrant to cause a man to appear, &c.*

**A**. B. Miles Vicecomes Com. præd' Ballivo Hundredi de R. salutem. Ex parte Dom. Regis tibi mando quod capias J. S. &c. Et eum salvo, &c. ita quod habeam corpus ejus Coram. Justic. Domini Regis apud Westm. in Octabis Sancti Hillarij ad respondend. C. D. de placito debiti (or Transgress. according to the Writ) Et hoc, &c. Datum sub sigillo Officij mei decimo die Aug. Anno Regni Domini Regis, nunc Angliæ, &c. 20.

Per A. B. Milit. Vicecom.

*The*

*The form of a special Warrant.*

Cantabr.

**A** B. Miles Vic' Com' præd' ballivo hundredi de R. necnon J. W. T. B. ballivis meis hac vice, & eorum cuilibet salut'. Ex parte Dom' Regis vobis & cuilibet vestrum conjunctim & divisim mando, quod capiat' seu aliquis vestrum capiat. J. S. si, &c. & eum salvo, &c. Ita quod habeam corpus ejus \* coram Domino Rege apud Westm. die Jovis prox. post. Octab. Sancti Hill. ad respond. C. D. de placit. transgr. &c. Datum, &c. ut supra.

\* Note, If the Writ cometh out of the King's Bench, then the Warrant must be, Ita quod habeam corpus ejus coram Dom. Rege, &c.

But if the Writ come out of the Court of Common Pleas, then it must be, Ita quod habeam corpus ejus coram Justic. Domini Regis, &c. & plus hic c. 75.

And after the same manner, must the Return of Writs be: As upon a Fieri facias the Sheriff must Return, & Denarios illos habeo coram Domino Rege, if the Writ comes out of the King's Bench: But if the Writ be out of the Common Pleas, then Coram Justic. infra script, &c. and if out of the Exchequer, then Coram Baronibus infra script, &c.

Nota, The Warrant must always be pursuant to the Writ.

*Another good form of a Warrant.*

Cantabr.

**A** B. Miles Vic' Com' præd' omnibus ballivis meis (vel omnibus ballivis infra Com' præd') tam infra libertat. quam extra, necnon J. B. & C. D. ballivis meis hac vice tantum salutem. Ex parte Domini Regis vobis & cuilibet vestrum conjunctim & divisim mando, quod Capiat. seu aliquis vestrum capiat J. S. si, &c. Et eum salvo, &c. ita quod habeam corpus ejus coram, &c. ut supra.

w. 14.

The last Warrant is a good form to be used upon Executions, or upon Capias utlagatum, &c.

*Another plain form of a Warrant.*

Decimo die Aug. Anno Domini, 1622.

**B**y vertue of the King's Majesties Writ to me directed, returnable Coram Domino Rege apud Westm. die Jovis proxim. post 15. Sancti Hillarij, &c. You shall Arrest J. S. if he may be found within my Bayliwick, to answer to C. D. in a Plea of Trespass, &c. (or in a Plea of Debt according to the Writ.) Datum sub sigillo Officij, mei, die & anno supradictis.

Per B. A. Mil. Vic.

To J. P. and R. S. my special Bayliffs in this behalf, joyntly and severally greeting.

If the Sheriff's Warrant be directed to two Men joyntly, to Arrest another, yet either of them alone may do it.

If

If the Sheriff direct his Warrant to four or three jointly, or severally to Arrest a Man, yet two of them may Arrest him, because it is for the Execution of Justice, Co. Lit. 181.

The form of a Bond for appearance of the Prisoner, *See hic postea tit. Obligation.*

*See other forms of Warrants hereafter.*

## C A P. XXIV.

The nature of Executions, and of how many sorts they are, and how they are to be done and executed.

*Executio est fructus finis & effectus Legis, Co. Lit. 289.*

**E**xecutions are of divers sorts, and in divers manners to be executed and done, *sc.* *Executions.*

- |   |   |  |   |   |
|---|---|--|---|---|
| 1 | { | Statute Merchant   | { | <i>de corps, terres, &amp; biens.</i>   |
| 2 |   | Statute Staple,  |   |   |
| 3 | { | Recognizance,  | { | <i>de Medietate terrarum, &amp; tous les biens : &amp; aucun foits, del Corps, terres, &amp; biens.</i> |
| 4 |   |  |   |   |
| 4 | { | Elegit   | { | <i>de Medietate terrarum, &amp; de tout les biens le dettor.</i>  |
| 5 |   | Capias ad satisfaciendum, <i>de corps tantum.</i>        |   |   |
| 6 | { | Fieri facias, <i>de biens tantum.</i>                    | { |   |
| 7 |   | Levari facis, <i>de proficuis terre, &amp; de biens.</i> |   |   |

Execution in our Law signifieth the last performance of an Act, as of a Judgment, Statute or the like : And these Executions are of two sorts, one final, another with a quousque, &c.

An Execution final, is, when the Defendants Lands are extended, or his Goods sold, and delivered to the Plaintiff, who accepting this in satisfaction, ends the Suit.

*Co. s. 87.* An Execution with a quousque, and not final, is in the case of a Capias ad satisfaciendum, where the body is taken to the intent to satisfy the Plaintiff ; but is no satisfaction, but a pledge for the Debt. Neither is the parties Imprisonment absolute, but until he both satisfy or agree with the Plaintiff.

*Nota, que le Stat. Merchant, est bond ou Obligat' de record, acknowledge devant le Mayor de London, York, Bristol ou Chester, ou de autre City, ou devant le Bayliff d'aucun Borough ou Ville, ou devant auters persons la a ceo purpose appoint ; & est seal ouesque les seals del dettor, & del Roy ; le form de quel veies in West. 106. Fitz. 130. c. P. Stat. 1.* *Sur Statute Merchant.*

*Si Stat. Merchant ne soit seal per le party, ne vault. 6 R. 2. Fitz. Exec. 131.*

*Certifie in le  
Chancery.  
1. Execution  
serua del corps.*

*Del terres &  
biens.*

*Non est inven-  
tus.*

If a man be bound in a Statute Merchant (and do not pay the debt at the day) Execution shall be done thereof in this manner: First (the Conusor may come to the Mayor or other Officer before whom the Statute was acknowledged, and pray him to certify the same into the Chancery under his Seal, &c. And if he will not certify it, then a Writ of Cerciorari must be sued forth of the Chancery, directed to the said Officer, &c. of the place where the Statute was acknowledged, to certify the acknowledgment of the same Statute into the (pertty bag Office in the) Chancery, and upon that Certificate a Writ of Execution, sc. first a Capias shall go out to the Sheriff against the Body, (only of the Conusor si laicus sit) to take his body, if he can be found, and command the Sheriff to keep him safely in Prison, until he hath agreed for, or fully satisfied the Debt: But the Debtor after he is taken, hath liberty given him (within a quarter of a year) to sell his Lands and Goods to discharge his Debts: And if he do not agree for his said Debt within the next quarter, or if he cannot be found, then all his Lands and Goods upon an extendi facias shall be praised by a Jury, and shall be delivered (by the Sheriff) to the Creditor by a reasonable extent to hold until the debt be fully paid; and yet nevertheless the body of the Debtor if he be taken, shall remain in Prison until the debt and damages be paid.

*Statute de  
Acton Burn  
13 E. 1.  
& Stat. de  
Mercator  
13 E. 1.  
Fitz. 130.  
131, &  
244. c. 1  
P. Stat. 1.*

And this Writ may be returnable into the Court of Common Pleas, or into the King's Bench. *Fitz. 130 g.*

But upon the return by the Sheriff (of that Shire to whom the Capias was directed) quod laicus est, & non est inventus in balliva sua, then shall go out an Extent (or Extendi facias) against all the Conusors Lands and Goods: Quare, vide le Regist. 147.

And upon such an Extent come to the Sheriffs hands, the Sheriff shall or may presently cause the Lands, and moveable Goods of the Debtor to be praised (and delivered to Creditors, or else he may cause Goods to be sold as far as the Debt doth amount) and the debt without delay to be paid to the Creditor. See Stat. de Acton Burnel 13 E. 1. And such valuation or Extent of the Lands and praising of the Goods, shall be by a Jury.

The Sheriff shall cause the same Goods to be delivered to the Creditor at a reasonable price, as much as doth amount to the Debt.

And if the praisors of the Lands or Goods do set an over high price, to the damage of the Creditor, then shall the things so praised be delivered to the praisors at the same price, and they shall be forthwith answerable unto the Creditor for his Debt, &c. and yet if the Goods be delivered to the praisors, they shall not pay the Money until the days which are assessed and limited in the Extent: But they shall presently become Debtors for the duty and chargeable with the payment thereof, at such days as the Rents are payable, or the Remeunies receivable, and not before, Flow. 205. b.

*N. br. 165.  
Fitz. Extent  
7. Flo. 82.  
127.*

Also note, That the Sheriff must sell the Goods to them which offer most for them, and if the Sheriff shall sell them at any under price, it seemeth the Debtor hath no remedy, See the Statute de Acton Burnel.

13 E. 1. If the Debtor have no moveables whereupon the Debt may be levied, then shall his Body be taken and kept in Prison until he hath made an Agreement, &c.

The Creditors shall be allowed for their damages, and all costs, labours, suits, delays, and expences, Stat. de Mercator. & Co. 4. 67.

And so soon as the Debt is levied, the Body of the Debtor shall be delivered with his Lands, ibid.

If the Sheriff do not return the Capias; or do return that the Writ came too late, or that he directed it to the Bailiff of some Franchise, he shall be punished, and shall yield damages to the party grieved, according to the Statute of Westm. 2. c. 39. Stat. de Mercatoribus. Tamen vide tiel Returns Libr. Intra. fol. 595. hic c. 58.

Note, That though it be within a Franchise, yet the Sheriff is to execute it himself. See hic c. 58.

*Si le Debtor soit Noble home & Peer de Realm, uncore son Corps in ascuns casés poet estre prise in Execution, sur un Stat. hic c. 21.*

See Fitz.  
131. c. 266.  
b. Stat. de  
Mercator.  
Vide Fitz.  
Execut. 79.

If the Sheriff return that the Debtor is a Clerk, then there shall go out an extent against his Lands and Goods (only) to be delivered by a reasonable extent as aforesaid: But his Body shall not be taken, by this Statute. And yet if the Writ be to take his Body (being a Clerk) the Sheriff may then take his Body in Execution; and the party is to procure a special Writ in such case, to be directed to the Sheriff, commanding him not to grieve or molest him, and that if he be taken, that then he shall deliver him, except the Sheriff knoweth any cause why he should not enjoy the Privilege of a Clerk, Fitz. 131. a. Or the Sheriff needs not to meddle with the Body, but may Return Quod Clericus, &c.

Clerk.

If the Debtor found Sureties (which acknowledged themselves to be principal Debtors after the day passed) they shall be ordered in all things as the principal Debtor, i. e. for the Arrest of their Bodies, and delivery of Lands and Goods, Stat. de Mercator.

Sureties.

But so long as the Debt may be fully levied of the Goods of the Debtor, the Sureties shall receive no loss, Stat. de Acton Burnel.

And if any of these Debtors (being in Prison) shall happen to escape the Sheriff or Gaoler must answer the Body of the Debt; and therefore it behoveth the Sheriff and Gaoler that the Prisoners be safely kept, Stat. de Mercator.

Escape.

5 H. 4. c. 12 Note, That when any Statute Merchant is certified into the Chancery, and thereupon a Writ awarded to the Sheriff, and returned into the Common Pleas, and the Statute there once shewed, howsoever the Process after the same shewing be discontinued, yet at what time soever the party sueth to have the Process recontinued, and to have execution of the same Statute, the Justices of the Bench where the Statute was once shewed, may upon the same record make and award a full Execution of the Statute Merchant aforesaid, without having the sight thereof another time,

And

And

And yet see Dyer f. 180. Termino Pasch. An. 2 El. where the Conusor Dyer 180. of a Statute Merchant having the same certified into the Chancery upon a Cerciorari directed to the Mayor, thereupon sued a Capias against the Conusor returnable into the Bench, at which day the Sheriff returned Non est inventus, and the Conusor shewed there the Statute (as he ought) and had another Capias, before the return whereof the Conusor died, and it was doubted whether the Executors should have a Scire facias against the Conusor, or that he should begin of new, sc. to sue a new special Writ out of the Chancery to the Mayor, to make certificate (notwithstanding the first Certificate) and to have out of the Chancery a new Capias or no, whether (at the suit of the Executors) the Justices of the Bench might have awarded an Alias Capias, or a Writ of Extent upon the first proceeding or not; But it was agreed by the Court that no Scire facias did lie in this case; but upon Oath made by the Executors in the Chancery, that the Debt is not satisfied, they shall have a new Cerciorari to the Mayor, to make a new Certificate of the Statute, and so to begin all again of new, Vide Fitz. 231. b. c.

*Nota, que sur Statute Merchant, home poet aver Action de Debt; ou poet suer Execution accordant al Statut, 3 E. 4. 27. 29 E. 3. 22. Br. Stat. 31. & 47.*

Pote also, That if a Man be in Execution upon a Statute Merchant, he must be found in Prison out of the Rents and Revenues of his Lands which are in Execution; viz. the Creditor out of the Rents and Revenues of his Lands is to find him Bread and Water; the which costs notwithstanding the Debtor must recompence the Creditor again with his Debt, before the Debtor be let out of Prison, Stat. de Acton Burnel. & Fitz. 133. c.

## C A P. XXV.

### Statute Staple.

Statute Staple.

**L**E Statute Staple est de deux sorts, ou in deux manners:

1. L'un per force del Statute, 26 E. 3. c. 9. & ceo proprie sic dicitur.
2. L'auter per force del Statute, 23 H. 8. c. 6.

Le primer est Obligation de Record, acknowledge devant le Mayor del Staple, in le presence de un del Constables de mesme Staple, & est seal ove le seal c. 9. del Staple, & seal del party: Mes tiel Statute Staple ne serra prise, sinon tantum inter Merchants de mesme Staple, et pur Merchandises de mesme Staple, Stat. 23 H. 8. c. 6.

L'auter est Obligation auxy de Record, et de mesme le nature et force que le primer est, quant al Execution de ceo: Mes est acknowledge devant lun del Chief Justices, et in leur absence (hors del term) devant le Mayor (del Staple al Westminster) et le Recorder de London, et est seal (ove que troies seals, vid. pl. 62. b.)

seals, sc.) ouesque le seals del Conusor, del Roy, & del un des dits Justices, ou del Mayor & Recorder, 23 H. 8. c. 6. P. Stat. 5. 7. & 9.

Les forms de ceux Statutes Staples, veies, 23 H. 8. c. 6. P. Stat. 6. & in Westmin. 108, 109.

7 E. 4. Nota, que tous Statutes (Merchant & Staple) serra port al Clerk de Recog. deins 4 mois, & inrol. deins 6 mois, autrement tiel Statute serra void vers purchasors, &c. P. Stat. 15, 16.

Cestuy queest en Execution sur Statute Staple, ne serra deliver sans Scire facias vers party, & surety sur ceo troue al Roy, & al party, 11 H. 6. c. 10.

27 E. 3. c. 9. 15 R. 2. c. 9. Fitz. 131. d. A Statute Staple must be certified (into the Chancery) in the like manner as a Statute Merchant, and upon that Certificate a Writ of Execution shall presently go forth, both against the body (si laicus sit) and against the Lands and Goods of the Conusor, returnable in the Chancery in the petty-bag Office there, (and not into the Court of Common Pleas, or King's Bench, as the Writ of Execution upon a Statute Merchant shall.) And upon the Writ of Execution, the Sheriff shall take the body of the Conusor, and shall also (per Sacramentum proborum & legalium hominum, & juxta verum valorem, Fitz. 131. d.) presently extend, and prise, and shall seize into the King's hands his Lands, Goods and Chattels; and that extent and prise-ment or valuation of the Lands and Goods shall return and certifie into the Chancery, as aforesaid, and thereupon the Conusor shall have another Writ called a Liberate to the Sheriff, out of the Chancery to deliver to the Conusor those Lands and Goods to the value of his Debt, &c. And upon that Liberate delivered to the Sheriff, such Lands and Goods as are taken in Execution, shall without any other Inquisition, and according to the former extent or valuation, be delivered to the Conusor by the Sheriff, and not before. And this Execution shall be made in manner as before is declared upon a Statute Merchant, 27 E. 3. c. 9. Vid. P. 62. b. & Fitz. 131. c. 132. the form of the Liberate. Certificate in le Chancery. Liberate.

Et sic nota, que sur Statute Merchant l'Obligor ou Conusor serra Imprison per dimid' ann'. Et sil ne vend ses terres deins mesme temps pur payer ses Debts, donque ses terres serra deliver al Obligee tanque son Debt, &c. soit satisfie. Mes sur Statute Staple le Dettor ou Conusor apres que il est prise, n'avera Liberty de vender ses terres & biens deins le demy an, come il avera sur Statute Merchant; Mes per force de cest Statute Staple, si le Money ne soit pay al jour, maintenant apres Certificate del ceo en le Chancery, le Creditor poit aver Execution del Corps, terres, & biens del detter, sc. le Conusor serra Imprison, tanque il ad fait gree al Creditor del Debt, & Damages, & tous ses terres & biens serra extend instanter; Mes ne serra deliver al Conusor tanque le Liberate veigne al Vic'. Regule.

Auxy nota, que sur Statute Staple le extent serra primes fait, & return, & puis brief de Liberate serra agard; mes delivery ne serra fait al commencement, tanque le chose appiert certainement per le Return del Vicount, Plow. 62. b.

32 H. 8. 46. Tous Obligations & specialties faits al Roy (ou a son use, per a(cun cause) ser- Dettor le Roy. ra de mesme force que Statute Staple est, 33 H. 8. c. 39. & 22.

Touts obligations prise de Ecclesiastical persons pur leur First-fruits, serra de mesme le nature & force que Statute Staple est, 26 H. 8. c. 3.

Les terres de (plusors) accountants al Roy, serra liable & mise in execution, sicome ils ussent estre lie in Statute Staple, 13 El. c. 4. P. Account. 29. & 39 Eliz. c. 7.

Le heir que claim per done son auncester, serra lie a payer le det le Roy, per Statute, 33 H. 8. c. 39. & 34 H. 8. c. 2. Plo. 440.  
Co. 7. 29.

Issint le heir in tail (per mesme le Statutes) serra liable de payer det le Roy due per son auncester, Ibidem: Vide Plow. 240. b. 249. b. 554. b. & Fitz. 217. c.

Mes si tenant in tail deveigne in det al Roy per receipt des deniers del Roy, Co. 7. 21. ou auterment, sinon que soit per judgment, recognizance, obligation, ou auter specialty, & morust, la le terre in le seisin del issue in tail, per force del dit act de 33 H. 8. ne serra extend pur tiel det le Roy: Car le Statute de 33 H. 8. extend solement al dits 4 cases; & touts auters dets le Roy remain al Common ley.

Si tenant in tail deveigne in det al Roy, per un des dits 4. voies (sc. Co. 7. 21. per Judgment, Recognizance, Obligation, ou auter specialty) & morust, & devant aucun proces ou extent, le issue in tail bona fide alien (ou lessa) le terres intailed, ore cest terre ne serra extend per force del dit act de 33 H. 8.

Issint, lou det fuit originalment due al subject, & apres deveigne ou accrue al Roy per reason de attainder, outlawry, forfeiture, done del party, ou per aucun auter voy, ou meanes, tiel det n'est deins le dit Statute de 33 H. 8. de charger terres intailed, in le possession del heir in tail. Co. 7. 22.

Mes terres in Fee-simple fueront extendable al Common Ley (pur det le Ibidem; Roy) en quecunque mains que eux deviendront; & pur ceo quant al eux le dit Statute de 33 H. 8. ne fuit forsque declarativum antiqui juris, Co. 7. 21.

Deux joyntenants in fee, l'un de eux esteant debtor le Roy morust, laut' tiendr' discharge, Fitz. Execut. 113.

Le heir serra chargeable de paier det le Roy, coment que il ne soit noisme (ou 33 H. 8. que cest parol heir ne soit comprise) deins le Recognizance, Obligation, ou c. 39. specialty.

Roy serra preferre in son suit & execution, devant common persons, sc. si son suit soit commence devant l'auter ad judgment, vide les Statutes, 9 H. 3. c. 18. & 33 H. 8. 39. & hic. c. 10.

Auxi Dyer 67. le vic. sur brief de Extendi fac. (d'avre execution sur Statute Staple) extend les ters del def. & appreise ses biens & eux seise in mains le Roy, come le dit brief command, & avant que fuer. delivrer per le vic. al conuzee, auter brief de Prærog. vient al vic. hors del Eschequer pur la Roin, de levier det le Roin de 100 l. & c. Et le vic. return le premier extent, & que ultra ceo biens & ters n'ad autres, & fuit tenuus que le Roin avera execution de dits biens & ters, per sa Prærog. Eo que le property de eux ne fuit in le conuzee, tanque sont delivrer a luy per le brief de Liberate, & le vic. fuit amerce pur le special return, & c. Et accordant a ceo fuit tenuus per Curiam (in Communi Banco) Anno 31 Eliz. que

que sur *Extendi facias* d'avoir Execution, & le Vic<sup>e</sup> fist extent accordant del ters & biens le party, & eux seise in mains le Roy accordant al brief, que ore le possession del terre ne le property del biens ne serra in cestuy pur que l'Execution est fait devant que ils sont delivrer a luy per le Vic<sup>e</sup> sur le *Liberate*; car les parols del brief sont de seiser in mains le Roy, &c. issint que ils ne sont in le Roy tanque delivry, &c. vide autres semble cases, Dyer 197. 296. & 307.

Co. 8. 171. Debtor le Roy possesse dun lease vend ceo bona fide, cest lier le Roy, car forsque Chattel.

Co. 11. 93. Nota, que le Roy levier le somme de que ascun est chargeable a luy, non solement vers le party mesme, sc. de son Corps, & ses terres & biens in ses mains demesne, mes in les mains de ses heirs, Exec. ou Administrat. & s'il nad Executor ou Admin<sup>r</sup> donques in les mains des Possessors des biens del mort.

## C A P. XXVI.

Queux terres, & biens serra extend ou prise (per le Vicount) in Execution (sur Statute ou in brief de debt, &c. apres Judgment) in case de Common person.

**N**ota, que sur Statute Merchant ou Staple, tous le Fee-simple terres, queux le Conusor avoit al temps ou jour del dits Statutes acknowledge, ou al ascun temps en apres, serra liable al dits Statutes, in quecunque mains que ils viender. apres, per alienation, feoffment, ou auterment, Stat. de Mercatoribus 13 E. 1. 27 E. 3. c. 9. & 23 H. 8. c. Co. 3. 12.

Et uncore si un auter ad ceux ters in Execution per *Elegit*; ou que un auter est eins per discent, &c. ils ne serra mise hors de possession sans *Scire facias*; Et per ceo in tiels cases le Vic<sup>e</sup> doit Return tiel special matter, sur le brief de *Extendi facias*, f. Retor. 112. sc. the Sheriff in the first case may return that he hath extended the Land of the Defendant, but that he cannot deliver the same to the Plaintiff, for that another had the same in extent before, hic c. 28. & 27.

Si le debtor morust, le Corps de son heir ne serra prise; mes son Fee-simple terres que discent a luy del Conusor serra prise (in form arandis) si soit de plein age ou quant il viender al plein age, quousque le det soit levy, Statute de Mercatoribus.

Et issint fuit le Common Ley devant, sc. que in det vers le heir, le plt. avera tout le terre, que discent al heir, in Execution, & uncore n'avera donques Exec. d'ascun part del terre vers le pere mesme.

Nota, que le heir ne serra charge pur debt due per son auncestors, neque per le Common Ley, nec per Statute, sil ne soit Nosme. Uncore le terre que le heir ad serra extend per *elegit*, sur *Scire facias* port vers luy come terre-tenant, de terre liable al Execution, Dyer 271.

L'Executors s'erront charge coment que ils ne sont nosme. Auterment del heir, Co. Lit. 209.

Nul Execution serra sue vers le heir deins age, sur Statute Merchant, ou Staple, Recogn. Elegit, ou Obligation, Co. Lit. 290.

Home seise de terres in Gavelkinde ad issue 3 Fitz. & lie luy & ses heirs in Obligation, & morust, Action de Debt serra maintain vers tous les fits, Co. Lit. 137. b.

Auxi nota que ad este tenus que le heir ne serra charge in debt lou le Executors ont assets, Vide Fitz. Exec. 25. Br. Det. 237. 7 Ed. 4. 13. & Plo. 193. a. b.

Mes (a ceo jour) le Ley semble auterment, sc. que est al election del creditor de suer le heir, ou le Executor, quant ambideux ont assets, Vide 4 E. 4. 25. 22 H. 6. 4. 10 H. 7. 8. Doct. & Stud. 153. Dyer 204. & Plow. 439. 440.

Auxi semble que si le heir ne confesi l' Action, & monstre le certainty del assets que il ad per discent, mes plede riens per discent, ou est condemn per default, &c. que la le Plaintiff avera Execution de son auter terre, ou de ses biens, ou de son corps, per Capias ad satisfac. Plo. 440.

Nota que Fee-simple terres del heir queux il ad per discent, jour del brief purchase, ou apres, serra liable: auterment sil ad alien devant le brief purchase, sinon que soit per covin, Co. 5. 60. & 10 H. 7. 8. Co. Lit. 102.

Possession in Ley que discent sur le heir, luy charger.

Iffint lou il entre pur condition, &c. Br. Assets 8.

Pur terres in Gavelkinde tous les fits serra liable pur des leur pere.

Reversion sur estate pur vie discent al heir, ceo luy charge, &c. Br. Assets 12. 19.

Reversion serra mise in Execution, & le Judgment serra cum acciderit, & in le mesme temps serra del rent, Dyer 373. Fitz. Assets 237.

Reversions, & remainders serra extend in quecunque mains que ils vienderont, per Curiam, Mich. 36 Eliz.

Nota in debt home avera Execution de nul terres mes de cel que le def. ad le jour del judgment done ou rendus, 2 H. 4. Fitz. Execut. 24. Vide le Statute de Frauds & Perjuries, Anno 29. Car. 2. quant a cest point.

Si home sua Statute Merchant de parcel de les terres, in nosme de tous les terres, il naver auter Execution apres, Fitz. Execut. 134.

Si jeo nay forsque un acre per discent, jeo serra charge de 1000 l. per Obligation fait per mon pere, per Belk. 40 Ed. 3. 15. Fitz. Execution 32. Vide & quare. Car semble que le heir soit conuistre ceo que a luy est discent, & demand Judgment si de plus que de value del ceo il doit estre charge.

Terres intail ne sont liable forsque durant le vie le conusor, come si tenant in tail soit lie in Stat. ou Recognizance, le terre tail serra lie durant son vie, mes ne lier lissue in tail, Br. Recogn. 7. Uncore si lissue in tail in feoffe estranger, ore Execution serra vers le feoffee, 19 E. 3. Fit. Receipt. 112. Plo. 357. b.

Mes si tenant in tail conust Statute, ou Recognizance, & apres alien, le terre in mains le feoffee ou alienee serra subject al cest Statute ou Recognizance, Co. 1. 62. & 2. 52. 8 H. 7. 8. Copy.

*Copyhold terres, ne sont liable, ne serra extend sur Stat ou Recognizance, &c.*

*Lease pur Term de vie, serra extend, per annual value, de satisfie le Debt. Mes le vic ne poet vender ceo pur debt.*

*Nota, que sur judgment in brief de Debt le Plaintiff ne avera Execution, mes de tiels terres queux le Def. avoit jour de judgment render, & de chattels, il avera Execution solement de ceux que Def. avoit jour de Execution sue, Terms del Ley tit. Execution, & viel Na. bre. 165. 2 H. 4. 14. Br. 23. Co. Lit. 102. a. Finch. 471.*

*Lease pur term de ans, & tous auter biens et chattels de conusor ou debtor sont liable, & serra extend, (c. in Debt ou sur Stat.) tiels queux le Debtor, ou conusor ad in son possession demesne, & a son use demesne, al temps ou jour del execution sue ou agarde. Mes sale de chattels, bona fide, apres judgment, & devant execution agard est bon (sed nemy apres execution agard) come appiert en 2 H. 4. f. 14. per Cur. 11 H. 4. f. 7. & 9 H. 6. 58. & Co. 8. 171. & N. bre. 165.*

2 H. 4. Ex-  
ecut. 14.  
Kiel. 87.

*Uncore per Babbington 7 H. 6. Br. Execution 116. Si home soit condemn in debt, ou oblige in un Stat. les biens queux il ad jour del judgment, ou conusance del recognizance serra lie al execution, in quecunque mains que ils viendera, quod non fuit negatum: Et Co. 7. 39. a. Chescun execution, in le judgment del Ley, ad relation, & retrospect al judgment, See hic 29.*

*Mes un fraudulent Conveyance, ou done de terre ou biens, ne avoider ascun execution, Vide les Statutes 50 E. 3. c. 6. 1 R. 2. c. 9. 2 R. 2. Stat. 2. c. 3. 3 H. 7. c. 4. 13 Eliz. c. 5. & 7. & les livres, 43 E. 3. f. 3. Dyer 295. & Co. 3. 81, 82, 83.*

*Terres in auncient demesne sont liable al Statute & poent estre mise en execution sur ceo, Vide F. Execution 118. & 7 H. 7. 10. Br. Ann. dec. 37. m. Fitz. Retorne 109. contra, & Dyer 373. Vide Co. 4. 67. & 5. 105.*

*Terres ou Biens, tenus jointment per le conusor ouvesque Estranger, & le conusor est condemn in damages & morust devant execution, ceux terres ou biens veignans a le estranger per survirer, ne sont extendable, Br. Execut. 116. & 148. & Fitz. Execution 113.*

13 H. 7.  
23. 2.

*Terres la feme sont extendable durant le couverture, pur debt le baron, 15 H. 7. fol. 14.*

*Rent poet estre delivrer in Execution, Fitz. Avowry 237. Exec. 63.*

*Rent extinct per release del party, poet estre extend, Co. 7. 38, 39.*

*Come si home ad judgment a recover det ou damages, per ceo le Rent que il ad ascun Estate de Franktenement est liable a ceo, & pur ceo coment que apres judgment ceo soit release, &c. uncore ceo poet estre extend.*

*Mes homen avera unques un chose extend sur un Execution sinon que il poet graunt & assign mesme le chose, per Shelly 28 H. 8. f. 7.*

*Et pur ceo un annuity ne poet estre delivrer in Execution, Doct. & St. f. 53.*

*Iffint les profits del Office, ou auter chose que ne poet estre grant ou Assigner ouster, ne serra extend, Dyer f. 7.*

Bicms

Biens demise ou paigned, ne poent estre prise en Execution, pur son debt que demise ou paigned eux durant le temps ou term, que ils sont issint demise ou paigned, Vide 22 Ed. 4. fol. 10. 34 H. 8. Br. Pledg. 28.

Come si home (bona fide) lessa son barbits (ou oxen pur ans,) &c. ou fil 4 Ed. 6. bail ses biens in pledge & apres serra condemn in personal Action, la tiel barbits ou biens ne serra prise & mise in execution, tanque le lease soit determine, ou le money pay pur le pledge, Br. Distr. 75.

Issint semble de biens que sont distrain pur just cause (come pur rent, amercement, damage fessant, & tiels) & sont impound, ils sont ore in custodia legibus, & tamdiu que ils sont issint, ils ne poent estre prise in execution, See Br. Pledges 18. Finch. 11.

Det ou damages recouer vers un communality, nul execution serra fait mes tantum del biens queux ils ont in common, Fitz. Execution 128.

Si le conusor infeof le Roy, ceo terre est discharge del execution, Fitz. 266.

Issint tous auters terres del Roy sont exempts des distresses, & des executions, Plo. 242. b.

Si plusors homes soient severalement seise de terre, & ils tous join in un recognizance (Statute Merchant, ou Statute Staple) in cest case le conusee ne poet extend la terre del ascun conusors solement, mes tous les conusors doivent ouwelment estre charge, & lun deux solement ne portera tout le burden, pur ceo que sont tous in ouwel degree: Et in executions queux concern le realty & charge le terre, le vicount ne poet fair execution del terre lun solement. Co. 3. 13. a. 14.

Lou le conusor ad alien part de son terre, uncore le conusor mesme, al volunt de conusee, poet estre solement charge, pur ceo que il est mesme le person que fuit le dettor, & que fuit lie, & pur ceo il & ses terres poient estre solement charge. Co. 3. 14. Br. Suit 10. 12.

Issint le heir del conusor (ou de cestuy vers que judgment est done in det) poet estre solement charge; uncore in ascun cases le heir del conusor avera contribution vers le feoffees son pere, &c. See Br. suit. 12. mes Co. 3. 12. semble contr. It. que le heir n'avera contribution vers ascun purchaser, coment que in reititate le purchaser vient al terre sans ascun valuable consideration, &c. car coment in le case dun recognizance, Statute ou Judgment, le heir est charge come terre tenant, & nemy come heir (& le reason del ceo est pur ceo que per le recognizance, ou Statute le heir nest lie, mes le conusor concedit, quod dicta pecunia summ. de terris, &c. levetur) uncore il n'avera contribution vers un purchaser. Co. 3. 12. Br. Suit 12.

Vide le liver 17 E. 2. Br. Suit 13. & Fitz. Execution 139. que cy longe que le heir ad assets execution serra vers le heir tantum, mes si le heir n'ad assets, execution serra sur tous les terre tenants, & chescun serra contributory al auter: Mes lou execution est sue vers le heir, que ad assets il n'avera contribution vers le terre tenants ne feoffees.

Mes quant le terre descend al divers heirs (ou files) lun heir solement ne serra charge, mes tous les heirs ensemble serra charge, auserment un heir avera contribution vers l'auter heir, car ils sont in aquali jure, Co. 3. 12, 13.

Br. Suit. 10.  
12.

Et quant al purchasor de tiels terres, coment lour dits terres apres le Judgments, Recognizance, ou Statute, soit subject al execution, uncore tiels purchasors ont greinder privileges done al eux (per le Ley) que le conusor mesme, ou son heir, ont: Issint que si le terres de un purchasor soit solement extend pur lentier det, tiel purchasor avera contribution vers tous auters de les purchasors, & vers le conusor, vel son heir; mes nota que per cest parol, contribution, nest destre intend que les auters donera ou allowera a luy aucun chose per voy de contribution, mes doit estre intend, que le purchasor (en party) que ad son terres solement extend pur tout poet per Audita querela, ou Scire facias (come le case require) defeater le execution, & per ceo serra restore a tous les mean profits, & chaser le conusee de suer execution de tout le terre, issint que in cest maner chescun serra contributory, issint le terre de chescun terre-tenant serra owellment extend, Co. 3. 14.

Mes si le conusor infeisse le conusee del parcel del terre, & un estranger de auter parcel, & reserve parcel in ses mains, ore le conusee navera execution vers lestranger (en aucun auter seoffee; car tout serra extinct ves les seoffees) mes uncore vers le conusor, le conusee avera execution del parcel que remain in son mains.

Fitz. 246.b Si le conusor d'un Statute Merchant, ou Staple, &c. soit prise, & morust in exec. uncore le conusee avera novel execution de ses terres & biens, Co. 5. 86, 87. Vide Fitz. 246. b. St. 21 Jac. 24.

Co. 5. 86. Si le conusor sur Statute, &c. soit prise in execution & escape, uncore ses biens & terres sur mesme Statute poeat estre extend, car lescap, & l'action que le Plaintiff ad vers le viscount pur lescap, n'est satisfaction del det.

Vide plus hic postea Execution sur Capias ad satisfaciendum.

11 H. 6. Si le conusor, &c. esteant in execution procura Corpus cum causa, de remover son corps, & sua Scire facias vers le conusee, &c. a defeat execution sur un Statute il primerment trova sureties al Roy, & al party Plaintiff de jeald son corps, ou de satisfaire luy son det ou duty, in case que de matters comprise in son Scire facias ne soit trouve & adjudge pur le conusor, Stat. 1 H. 6. cap. 10.

3 Jac. Auxy per le Statute 3 Jac. c. 8. nul execution serra stay, ou delay, per brief de Error ou Superfedeas, pur reversing d'aucun judgment in aucun action de det, sinon que le party (que sua tiel brief de error, oveque 2 suffice sureties soit primerment lie al party pur que tiel judgment est done, de prosecute le dit brief de error cum effectu; ac de payer tous le detts, damages, et costs, &c. si le judgment soit affirm, ac etiam costs et damages pur tiel delay.

2 H. 5. c. 2. Et pur ceo si home soit condemn in aucun court, et son corps mise in execution, Fitz. 251. c. et puis il procure un brief de Corpus cum causa ou Certiorari, destre direct al vicount de remove son corps, &c. icy le vicount sur le doit brief, dit return le verity, sc. que son prisoner est condempne per judgment done envers luy, &c. sur que le prisoner serra maintenant remand al prison, la a demurrer quousque il ad satisfie le Plaintiff.

Fitz. Execu. Si Statute soit acknowledge al deux, et l'un de eux purchase apres terres del purchase parcel tion 22. & conusor, dunque semble que le dit Statute ad perde son force vers ambideux, Vide 88. acc. le Register 147.

Si execution soit sue del corps, & del terre, & puis le conusor infeoffe le conusee del terre, ou surrender, parcel descend a luy, in tous ceux cas le corps serra discharge, car per discharge del part del chose in execution tout est discharge, Plow. 72. b.

Si homme soit lie in 2 Statutes, lun apres l'autre, & le darrein Stat' est primerment extend & delivrer in execution, & puis le primer Stat. est mise in execution pur greinder temps, & pur greinder somme, uncore quant le primer Statute est satisfie, le second conusee avera le terre arere per force del primer exeunt, Co. 4. 66. vide Fitz. Execution 250.

\* Nota le primer conusee poit aver Scire fac. & execution sur ceo. Co. 4. 67.

Quant le extent (sur Statute) est satisfie & incurre per effluxion de temps, le Conusor poit enter arere.

Mes quant le extent est satisfie per casual profit, le Conusor convient de aver Ibid. Scire facias, &c.

Defens al Statute, fait apres execution, est bon, & defeater cybien le Stat', Co. 6. 13. come le execution sur ceo.

Le Statute de Mercatoribus lie tous les terres queux le Conusor ad al Exec' & voet que serra delivrer al Conusee sur reasonable extent, mes ne parle que serra delivrer al extender, si ils eux extend troppe haut; & uncore serra delivrer al extender, per le equity del Statute de Acton Burnel fait devant, que biens preises troppe haut serra delivrer al preisors, &c. Plow. 82. b. 127. a. & 205. b. Co. L. 290.

Biens ouster preise.

Mes nota que le Statute de Acton Burnel, &c. est que si les preisors del biens le conusor (sc. les Furors) preise eux troppe haut (in faveur del dettor, & al damage del creditor) les choses issint preise serra delivrer al preisors pur mesme price & ils render le creditor son det, ceux Statutes sont penal & ne extender al ascun auter briefs de execution forsque sur le Statute Merchant, ou Staple, & sur Recog. Quere Co. L. 290. Recognizance. Et pur ceo sur brief de Elegit ou auter brief de execution sur judgment, si les extenders (ou preisors) preise les terres, ou biens, troppe haut, le Plaintiff (sc. le creditor) n'ad remedy, Benl. 4 P. & M. Quere si Re-extent ne gist. Et vide Stat. 32 H. 8. cap. 5. & Co. Lit. 289. b. 290. le dit Stat. bien Expound.

Nota, quant les terres ou biens sont delivrer al extendors, ils maintenant responder al creditor, de son det, per les parols del Stat. & uncore ils ne payer le argent tanque a les jours limit in l'extent, Plo. 205. b.

Si le dettor complaine que ses biens ou terres fuer' vend, ou delivrer al conusee al troppe petit value, uncore il n'ad remedy per le Common Ley, car in tiel cas le dettor poet pay le money, & recouvrer ses terres, ou biens, 15 H. 7. 15. Et auxy semble que n'averat remedy in Chancery, Eo que l'extent fait per Serement del Jury, especialment si ne fuit fait per Corvin: Mes serra intend que fuit Extend raisonablement, intant que les Extendors sont jurus, car autrement chescun verdit poet estre Examine in Court del Chancery, Crompt. Author. des Courts 35.

Nota, si le extendors ont extend les terres ou biens a troppe haut value, uncore si le vicount sur l'extent delivrer eux al creditor, & le creditor prist eux selonque le extent, ou sil ne vient in court meisme le terme que le vic' fait son retourne, & pria que sont delivrer al extendors, il n'averat remedy apres, Register 146. b.

*Et pur ceo le party poet bien refuse terre extend trope haut sur Statute, autrement serra conclude a preyer que l'extenders ils a vera, Fitz Extent. 11.*

*Auxy le party poet bien refuse quia le vicount ne voil luy delivrer forsque parcel del terre le conusor; car sil accept ceo, il serra conclude a demand tout apres, Fitz. Execution 48. & 86.*

*Coment le vic. doiet luy demeener in l'execution d'un Extent sur Statute ou Elegit, Vide plus hic postea, retorn de Elegit, & retorn de Extent.*

C A P. XXVII.

Execution sur Recognizance.

**R**ecognizance, est obligation de record, acknowledge in ascun Court de Record, ou devant ascun Judge, ou auter officer, atant authority de prendre quid. ceo, come devant les Judges del Banco Regis, vel del Common-Pleas, les Barons del Eschequer, les Masters del Chancery (soient ils in ordinary, ou extraordinary) & les Justices de Peace, &c. Et ceux que sont meere Recognizance, ne sont seal, mes sont inrol; Et ascun foits sont seal, ove le seal del party: Et poent estre ove condition annex, ou poet estre single, & donque de aver l'indentures de defeazance faits apres, Br. Recogn. 11. 14. & 19.

*Chescun des Chief Justices, vel en lour absence hors del Term, le Majors del Staple de Westm. ove le Record. de London. poet prendre Recogn. & serra execute en tous respects come Statute Staple, 23 H. 8.c. 6.*

*Auxy le Roy poet per son commission doner authority al ascun home de recevoir conusance de auter home, & de retorn ceo en le Chancery; Et per vertue de tiel commission, si home conust devant commissioner, ascun det al auter, destre pay a luy a certain jour, &c. & ceo certifie in le Chancery, ove le commission, &c. ore sur ceo certificat fait del cest conuzance, sil ne paya le det al jour, il a vera Elegit sur cest Recognizance issint prise, cybien come sil fuit prise in le Chancery, Vide Fitz. 267.a. Regist. 300.*

*Roy mesme ne poet prendre Recogn. mes doiet aver Judges ou Commissioners de south luy de ceo prendre, Br. Recogn. 14. & 19.*

*Le Court de Parliament seant, poet prendre Recogn, Br. Recogn. 8.*

*Eadem lex de Seignior Chancellor de Anglité, ou Seignior Keeper del grand seal, 1 H. 7. fol. 20. que ils poent prendre Recogn. Tamen Dyer 220.pl.14. semble contra.*

*Les Justices del Banco poent prendre & recorder Recogn. cybien extra Terminum, come infra Terminum, & cybien in ascun County de Anglité, come al Westm. ou in Curia, Br. Recogn. 20. vide.*

*Chescun Judge de Record, & chescun Justice ou Commissioner de Peace, que ad authority de seer in Justice pur le bien publique, poet prendre Recogn. Mes conservat. del Peace que est per le Custom de Realm (come Constable, &c.) ils ne poent prendre Recogn. Br. Recogn. 8. 14.*

Auxy Justices de Peace que sont per Statute, ou per Charter, poent prendre Recogn. pro Pace.

Chescun vicount del County est principal Conservator del Peace, per le Common Ley, & poent prendre Recogn. Vide hic. c. 4.

Le Chancellor de Court de Augmentations poent prendre Recogn. del Receivers, Farmers, Bayliffs, & auters Accomptants la, & tiel Recogn. de quecunque somme soit prise, serra bon, 27 H. 8. c. 27.

Les Knights del Parliament, & les Citizens & Burgeses, elect pur le Parliament, poent appointer Collectors, pur les Dismes & Quinzimes, & sur leur Nomination & Election de tiel Collectors, poent prendre Recogn. del eux (al use le Roy) d'estre indorse ove Condition de payer tiel summes que ils collecter, &c. Et ils certifier tiel Recogn. in le Eschequer; vide les Statutes pur le grant des tenths & fifteens.

Issint les Commissioners pur le subsidy poent appoint Collectors del subsidy, & poent prendre Recogn. de eux, &c. ibid.

Coroners sub leur Enquiry super visum corporis, &c. poent prendre Recogn. de 1 & 2 Ph. tiels queux poent doner evidence, &c. pur leur appearance al prochain general & M. c. 13. Gaol delivery, pur deliver leur knowledge la concernant le mort, &c.

Quant home conuist debt en Court de Record (ou tiel) soit al Roy, ou al common person, est le plus hault lieu que poent estre & come un Judgment (Scire fac' cybien come action de debt gift) & per ceo conus per un enfant ne serra avoide forsque durant son Non-age, per audita querela, Dyer 232.

Nota, que Recogn. n'est al Common Ley.

Sur Recognizance, la ne isserra Capias, in l'orig. Nec Capias ad satisf. Mes al primes la isserra un Scire fac' returnable in le Chancery; Et sur le return del ceo, ils use d'award un Fieri fac' ou un Elegit, al election del conusee, 48 E. 3. f. 14. Br. Execution 129. & Dyer 192, 306.

Lou un Capias fuit agard sur un Recogn. Fairfax move le Court que il poent aver Superfedeas, & fuit grant pur ceo que Capias ne gist sur Recogn, 27 H. 7. Kell. 100.

Mes si le plt. voile porter un original brief de debt al Common Ley, vers le conusor sur son Recogn, la si le Def. soit condemn, un Capias ad satisfac' gist, & le Corps del Conusor serra prise in Execution; Car la le plt. ad waive le plus speedy remedy, sc. le Scire facias que est fondue sur le Record, & ad estieu l'auter remedy, &c. Mes il n'avera execution la des terres que le conusor avoit jour de Recogn. fait, sicome il pouvoit aver in le Scire fac' mes des terres tantum que le conusor avoit die judicij redditus sur l'original brief. Dyer 306.

Sur Recogn. le conusee ne poit aver action de det envers le heir, car le Recogn. est, quod tunc vult & concedit, quod dicta pecunia summa de bonis & catallis, terris & tenementis, &c. levetur; issint que le charge est impose sur les biens & terres, issint que det ne gist sur ceo vers le heir, mes Scire fac' gist vers le heir. Co. 3. 15.

Uncore sur recogn. acknowledg al use le Roy (coment que les parols del recogn. sont de bonis & catallis, terris & tenementis, &c. levetur) le Roy avera hable 7 H. 4. f. 14.

liable a son execution, cybien le Corps, come le terres & biens de son dettor, See Co. 3. 12. b. & 11. 93. a.

Execution per force del recogn. (in case de common person) serra de tous les biens & chattels le conusor, (except ses avers del carue, & imployments de husbandry) & del moity de ses terres, & hoc per le Statute de Westm. 2. cap. 18. Westm. 103.

Recogn. de tenant in tail ne liera le terre tail, mes durant vie le conusor, & nemy envers lissue in tail, 38 Aff. Br. Recogn. 7.

Sur Recogn. le creditor preia Elegit del terre que le conusor avoit jour del conusance, ou unques puis, & non negatur mes que il avera; Mes fuit dit la, que si le vic. Return que le conusor avoit rien jour del Recogn. conus, mes purchase puis, la il avera come est preia supra, & non ante per luy: Et cum ipso concordat les anciens Tenures tit. Tenant per Elegit. Tamen a ceo jour il est use d'aver de lun & l'auter al primes, 24 E. 3. Br. Recogn. 4.

Scire fac' vers un que conust un Recogn. le vic. return luy mort, per que issist garnishment vers les terre tenants, que fuerant retorne garneis, & ne veigne pas, per que le plt. avera Elegit. 38 E. 3. Br. Recogn. 2.

A quel temps Recogn. poet estre sue, Vide Br. Recogn. 3. & 17. & Fitz. 266. c. 267. b. c. d.

Nota, que sur Recogn. le vicount poet fair execution de tout le moiety del ters, queux le conusor avoit al jour del Recogn. fait ou apres: Et le Extent ou valuation del dit moiety des ters, & preising des biens le conusor serra per inquisition. Et s'ils overvalue eux ils serra delivrer al preisors, come in case de Statute Merchant, Beal. 4. Ph. & Maria.

Auxi le Extent del dit moiety des ters, serra per meetes & bounds come semble.

Auxi sur recogn. le moiety del ters le conusor, queux serra delivrer per le vic. al conusee, serra al conusee, tanque le det soit levy per reasonable price & Extent; de que le conusee poet aver affize, & redisseisin, Finch. 101.

Vide per Statute 32 H. 8. c. 5. Re:extent done sur terre in execution sur Statute Merchant, Staple ou Recogn. loyallyment ewith, devant tout le det & damages satisfie, Vide Co. Lit. 289. b. 290. Cest Statute bien expound.

Auxi nota, que cest parol Recognizance, extend souvent fois in nostre livers, al Statutes Merchants, & Statutes Staple.

## C A P. XXVIII.

## Execution per Elegit.

**A**n Elegit is a writ judicial and lieth either for him that hath recovered debt or damages in the King's Court, or upon a recognizance. Elegit.

Recognizance in any Court, and must be sued within the year, *Terms del Ley*, Finch. 101. Co. Lit. 289. b. & 290. b.

By force of an Elegit, the Sheriff may take in Execution, and deliver unto the party (i.e. unto the creditor) the one half of all the Lands, Tenements and Rents of the Conusor or Debtor, at a reasonable extent, and all his Goods and Chattels (præter boves & affros de caruca sua) saving only his Oxen, and Beasts of his Plough, until the Debt be levied, upon a reasonable price or extent: And this is by force of the Statute of West. 2. c. 18. which is the first Statute which did subject Land to be taken in Execution upon a Judgment, or upon a Recognizance, which is in the nature of a Judgment. 13 E.c. 38.  
Co. 3. 12. a.

*Auxy sur debt ou damages recover in Court le Roy, le moiety de terres le Conusor que serra deliver per le vic. sur le Elegit, serra al Conuzee tanque le debt soit levy, &c. & de ceux le Conuzee poet aver Affize & Redisseisin, Finch. 101. & N. bre. 166.*

*Mes in case de Elegit, le Conuzee n'avera Damages, Costs, ne auter chose, mes seulement le terre, tanque le Debt soit satisfie, Co. 4. 67.*

This Statute of West. 2. c. 18. (which giveth this Elegit,) provided, quod vicecomes liberet ei omnia bona & catalla, &c. Et medietatem terrarum suarum, quousque debitum fuerit levat. per rationabile pretium, & extentum: which last words, pretium, is to be referred to Chattels, and extentum to be referred unto Lands, Et rationabile pretium & extentum, ought to be found by inquisition and verdict, i.e. the appraising of the Goods, and the extent (or valuation) of the Lands ought to be per Sacramentum duodecim proborum & legalium hominum, &c. For the Sheriff himself cannot appraise the Goods, nor value and extend the Lands upon an Elegit: Neither can the Sheriff upon an Elegit, deliver any Goods in Execution, or extend any Lands, but only such as are appraised and valued by the Jurors of the Inquisition, Co. 4. 74. Co. 4. 63. b.  
& 74.  
Dyer 100.

*Execution per Elegit convient estre per inquisition.*

Upon an Elegit or other Writ directed and delivered to the Sheriff to extend any Lands or Goods, the Sheriff by virtue of the same Writ may charge a Jury to make enquiry according to the same Writ: And the Sheriff and Jury may go to the House or Ground to be extended, or where the Goods to be praised do lie, and there may appraise and value the same, See Semayne's Case. Co. 5. 91.

And the Sheriff and Jurors may go into the same House or Ground (to that purpose) if the Doors or Gates be open; but may not break open the Gates or Doors, &c. Ibid. & hicc.

The words of this Statute of Westm. 2. c. 18. are thus, Liberent ei medietatem terrarum debitoris, quel per construction del Ley, est (medietatem) de tout que il ad al temps ou jour del judgment done, ou al ascun temps apres, Fitz. Execution 34. 249. Vide Co. Lit. 102. Co. 7. 39.

*Auxy le Statute de Westm. 2. c. 18. est quod vicecomes liberet medietatem terrarum, &c. & per lequity del ceo, le vic. poet auxy deliver (al creditor, ou Conuzee) le moiety des rents, Br. Elegit 13.* Br. Parliament 102.  
Pla. 178.

*Nota in veteri libro Intrac. que le breue de Elegit est quod liberet medietatem terræ, & Tenementorum suorum in balliua sua, & sic videtur que le dit St. de Westm. 2. debet intelligi de terris & Tenementis, per hoc Verbum tantum, coment le dit Statute ne parle de hoc verbo Tenemento, Br. Expof. 16. Elegit 13.*

*Auxy per les liuers de Intrac<sup>3</sup> le quart part dun mease poet estre Extend per un Elegit, Et uncore mease n'est terre: Et sic habetur in usu de faire Extent de moiety de Rent & hujusmodi, Br. ibid.*

*L'execution per force d'un Elegit serra fait del moiety per metas & bundas, & nemi per mie & per tout, Vide 31. Aff. pl.*

*Sur Damages recover (in trespas, ou waft) le Plaintiff preia Elegit des terres que le Def. avera jour d'Enquest prift, ou de brief purchase, & fuit deny a luy: Mes des terres queux il avera jour de Judgment rendue luy fuit grant 42 E. 3. 11 N. br. 166. & 167. & Fitz. Execut. 249.*

**Co. 4. 82.** *Auxy ceux parols (in le dit Statute de Westm. 2.) quousque debitum fuerit levatum, serra intend, be oz might be levied; Car si le Conufee, ou tenant per Elegit (ou tenant per Statute Merchant, ou Staple) neglect a prendre les profits, uncore quant le Conufee poet aver estre satisfie de son det solongue le extent, le conufor recavera son terre; mes il semble que ne poet enter in tiel case, mes est mise a son Scire facias, &c.*

*Si tenant per Elegit, &c. soit ouste per un estrange, la le temps incurgera, & il est mise a son remedy vers le trespassor.*

**Ibid.** *Si tenant per Elegit, &c. soit interrupt da prendre le profits del terre per Ou le Conufet, reason del guerre (sc. que le terre ou profits fuit distroy per guerre) uncore il ne &c. tiender tiendera ouster, mes ceo serra in son disadvantage, Fitz. Execution 146. & ouster. Co. 4. 82.*

**Co. 4. 82.** *Mes si les profits del terre sont degaste per surrounder del ewe, ou per wilde-  
15 H. 7. 15 fire, ou per ascun autre act de Dieu, sans default ou negligence del conufee, la le conufee (ou tenant per Elegit, &c.) tiender le terre ouster, sc. quousque soit satisfie de son det, Vide Br. Statute Merchant 41.*

**Co. 4. 66.** *Si le Conufee soit ouste per tort, per le Conufor, ou per ascun autre  
15 H. 7. claymant soub luy (pur vie ou ans, &c.) le Conufee tiender ouster, Co. 4. 66.*

*Iffint si le Conufee soit ouste per garden in chivalry, 15 Hen. 7. 14 15 Ed. 4. 5.*

*Si le femelle Conufor recover dower, le Conufee tiender ouster, Ibid.*

*Si cestuy in reversion que est d'aver le terre, oust a le Conufee, &c. il ad Election, ou de tener, ou a porter son action, Co. 4. 82.*

Re-extent.

Si le terres delivrer in execution (sur Statute Merchant, Staple, ou Recogn<sup>n</sup> ou sur recovery de debts ou damages) sont loyallyment recover, prise ou ewict del possession del conusee, &c. devant son det & damages sont satisfe, il avera Scire facias, &c. & sur ceo novel brief de execution ou Re-extent, pur levier le Residue, Stat. 32 H. 8. cap. 5. & Co. 5. 87. Finch. 101. & Co. Lit. 289. 290. vide.

In Trespas le Plaintiff recover, & le Defendant est prise pur fine le Roy, le Plaintiff prie que le defendant remainer in prison tanque il soit satisfe, (come il poet) icy le Plaintiff navera Elegit, pur ceo que il ad prise execution de son corps: Mes si le party devy in prison, issint que il n'ad execution, ove satisfaction, la il avera Elegit apres, pur ceo que n'avoit satisfaction solongue son primer election; & cest est per le Statute en 21 Jacobi. Co. 5. 87.

Costs &amp; Damages.

Mes apres satisfaction ewe, le conusor, in case de Elegit, poet enter arere, car le conusee navera damages, costs, ne auter chose, mes seulement le terre tanque le det soit satisfe, & pur ceo que tout est certain, le conusor apres lextent expire poet ente

Nota tamen que sur execution sur Statute Merchant, ou Statute Staple, le conusee avera ses damages & costs, ouster son det, come patet per le Statute de Acton Burnel & de Mercatoribus 13 E. 1. & per le Statute 27 E. 3. cap. 9. & pur ceo in tiels cases, semble le Conusor ne poet enter, apres lextent expire, mes doit aver Scire facias, &c. Vide 15 Hen. 7. 15. & Br. Scire facias 32.

Nota que le conusor avera Scire fac. deins le terme del extent, in ascun cases, & issint reavera son terre, Come,

Si le conusor voil porter les deiners in court, deins le term.

Ou si le conusee soit satisfe deins le terme, per casual profit.

15 H. 7. 19.

Ou si le conusor obtain acquittance, ou release del conusee.

Vide plus Terms del Ley, tit. Elegit.

Copibold.

Cest Statute de Westm. 2. cap. 18. ne extend al Copibold terres; Car serra prejudicial al Seignior, & encounter le custom del Manor, que estranger avera interest in le terre tenus per copy, per le custom, car ceo ne poet estre transfe al ascun sans surrender, &c. Co. 3. 9.

Auxi terre in Aunc. Deme<sup>ne</sup> & rent issuant hors del ceo poet estre delivrer in execution per force de un Elegit, hic c. 26. & Co. 5. 105.

Terres del Ervesque poent estre mise in Execution sur Elegit. Fitz. Execution 159. & Br. Elegit 23. (mes Br. Elegit 8. contra.)

Issint terres queux baron ad durans le couverture poent estre mise in execution, ibid.

Terres que auter ad a mon use poent estre mise in execution, Br. Execution 72. Elegit 11.

In det vers le heir sur obligac. son pere, que pled riens per discent, & trouve contra luy, per que le Plt. avoit Elegit del moiety, cybien de son terre purchase come de son terre per Discent, ratione del faux plee, Br. Elegit 24.

Mes si le heir ad estre condemn sur Nihil dicit, le Plt. avera execution per Elegit forsque des terres discent in fee, & queux il ad jour del brief purchase, Dyer 81.

Co. 4. 74. Term pur ans ne poet estre extend per le vic. sur Elegit, sans trouver le commencement & certainty del term, per inquisition: Car execution per Elegit convient estre per inquisition (ut supra) & si soit trouve per le inquisition que le dettor fuit possesse de certain terre pro termino quorundam annorum ad tunc ventur. cel inquisition est insufficient, car convient trouver le certainty, & le reason est pur ceo que apres le det satisfie le party est de reaver son term si aucun part de ceo remain; quel certainty del term convient apparear sur le retorn del vicount, come semble.

Co. 4. 73. Mes sur Fieri facias le vicount poet vender le lease ou term sans reciter aucun certainty sc. le vic. poet reciter que le dettor ad un term de tiel chose pro termin. diverfor. annor. ad tunc ventur. & que il vend ceo per force dun Fieri facias al J. S. &c. & ceo est bon. Issint si le vic. vend tout linterest que le dettor ad in le terre, ceo est bon, (nient obstant misrecital) car per common intendment le vic. ne poet aver precise conusance del certainty del commencement, & certainty del fine del term: Mes sil imprise a reciter le term & misprise ceo (reciting ceo fauxment) & vend mesme le term, ceo sale est void, pur ceo que nest aucun tiel lease ou term; uncore nient obstant faux recital si le vic. vend auxy tous linterest que le dettor ad in le dit terre ceo sale est bon.

Auxy le vic. ne besoigne de mention aucun certainty del term in son retorn de Fieri facias, mes generalment, quod Fieri fecit de bonis & Catallis, &c.

Nota que est al election del vic. de extender, ou de vender, un lease ou term tam diu que cest remain in les mains del dettor sc. le vic. a son election poet vender ceo tout ousterment; ou il poet extend & deliver ceo al conusee a certain annual value (come de franktenement) Et la le conusee a que le term est deliver ad un property, le quel est incertain, & le lessee, (ou conusor) mesme ad auter property, issint que sur le payment del det, ou sur le det receive del revenue del ceo per le conusee, le conusor reaver son term, Plo. 5. 24. vide Co. 8. 171. & 31 Aff. p. 6. 38 Aff. p. 4. & 44 E. 3. 16.

Nota icy diversity, le sale (per le vic.) dun term, Et un extent dun term Et que sur sale dun term per le vic. le party nad remedy daver son term arere (si non aucun remain) apres le det satisfie, come semble.

Nota que cest parol Extendere (ou Anglice, **Extend**) in nostre Ley, signifie le value de terres ou tenements de cestuy que est lie per Statute, ou Recogn. &c. (Et ad forfeit son Recogn.) & a deliver eux al conusee a tiel indifferent rate, que per le annual rent, le creditor ou conusee poit in temps estre pay son det, Co. 4. 67. Extendere quid

Auxy ceo parol extent (Extentum) ad deux significat. aucun foits cest signifie le brief ou commission al vic. pur le valuing del terres ou tenements; & aucun foits last del vic. sur tiel brief.

*Nota que apres Elegit, home n'avera Capias ad satisfaciendum, en tant que le brief est Elegit Executionem, que tous foits est file sur le Roll, issint que le awarding del ceo est de Record; Mes ceo serra intend' quant le vic. ad Retorne le Elegit seroy, la nul Capias gist apres: Mes si le vic. retorne Nihil, ore le party avera Capias; Issint ou le vic. retorn que il ad extend le terre del Def. mes ne poet delivrer ceo al Plaintiff intant que un auter ad ceo in Extent devant; Car (sur le matter) ceo est retorne Nihil, entant que le terre nest delivrer al Plaintiff. per Wray Chief Justice, 30 Eliz.*

## C A P. XXIX.

## Execution fur Capias ad Satisfaciendum.

*Capias ad satisfac.*

**A** Capias ad Satisfaciendum, is a Writ of Execution after Judgment, lping only where a man recovereth in an Action personal any debt or damages in the King's Court; there the recoverer shall or may have this Writ to the Sheriff, commanding him that he take the body of the party against whom the debt or damages is recovered, and him to keep in prison until satisfaction be made to the Plaintiff, &c.

And thereupon the Sheriff must Arrest the party, and put him in Prison, and there keep him without Bail or Mainprise, until he hath paid or agreed for the debt and the damages, Dr. & St. 18.

*Nota que nul Capias ad satisfac. gist al Common Ley (sur judgment par Debt ou Damages) mes tantum quant le Original Action soit quare Vi & armis, &c.*

*Mes le Capias ad satisfac. est done per un late Statute de q. Vide Co. 3. 11. &c.*

*Et doit estre sue deins l'an & jour apres le judgment, &c. Co. Lit. 190. b.*

And this Capias ad satisfac' is only against the Body, which being thereupon taken, the Sheriff must be sure to keep safe, or else he may perhaps pay the Debt himself. And therefore if the Sheriff shall take a man upon a Capias ad satisfac. to him directed, (or shall have any prisoner to him committed for Debt upon any Execution, &c.) and he after shall let the prisoner to go at liberty before the debt be satisfied, &c. The creditor may either have his Action of debt against the Sheriff, and shall so recover his debt: Or the creditor may have his Action of the Case against the Sheriff. <sup>21 H. 7. 11.</sup> <sup>Fitz. 93. 4. c.</sup>

*Escape per consent.*

And if the prisoner do escape after that he is once in execution, if the escape be with the leave and consent of the Sheriff, or his Under-Sheriff or Bailiff, Gaoler, or other Officer, Deputy or Servant, then the Sheriff hath small remedy, or none at all: See Plow. 36. a. & Dyer 278. <sup>Co. 3. 52.</sup>

And

And yet one being in Execution is suffered by the Sheriff to go at large for a time, by the consent and agreement of the Plaintiff, and after the prisoner returneth again, it seemeth that he is in execution again, and that such his going at large was no escape, See Dyer 275.

But if the prisoner do escape of his own wrong (against the will of the Officer) altho' he escape and get out of sight or into another County where the Sheriff or Officer hath no authority, yet if fresh suit be made, and he be taken again upon the fresh suit, he shall be said to be still in execution, Coke 3. 52. Vide 13 H. 7. f. 1.

Co 3. 44. 52  
L. 5 E. 4 12  
Br. Faux.  
Imp. 18.  
Yea, if the Prisoner do Escape against the will, and without the consent of the Sheriff or Officer, then the Sheriff or his Officer may take him again, where, or whensoever he can find him (by virtue of the same writ before the return thereof) although it be in another County or Shire; And if that the prisoner which so escaped be followed with fresh suit, and taken again, before any Action be brought by the Plaintiff against the Sheriff for the Escape, it shall be adjudged no Escape.

Co. 3. 52.  
Fitz. 95. c.  
& 130. b.  
And if the Plaintiff hath brought his Action against the Sheriff for the Escape, before that the Sheriff hath taken the prisoner again: Or if upon the Escape, the Sheriff or his Officers did not make fresh suit after the prisoner, yet in both these cases (if the Escape were against the will of the Officer) the Sheriff may take such prisoner again, and keep his Body in Custody, until the prisoner hath made his Agreement with the Sheriff: Or otherwise the Sheriff may have his Action upon the case against such prisoner for such his wrongful Escape (if the prisoner that so escaped be able to make him satisfaction;) and the prisoner in these cases shall not be relieved, because the Escape was of his own wrong, and without the consent of the Sheriff or Officer.

*Issint si home in execution escape, & Gaoler luy reprist, il demurr. in Execution pur le party arere, si le party voile, car l'escape est de son tort demesne, & nul prender benefite de son tort demesne, 13 H. 7. 1. & Finch. 12.*

*Nota, que si un soit in execution sur erroneous judgment, & puis escape, le vic. ne prender advantage de ceo Error, mes serra charge pur l'escape: Mes si le Erroneous Judgment soit reverse (per brief de Error) donque le vic. nest chargeable pur l'escape, car lu il poet plead nul tiel Record, Co. 8. 142.*

*Si un in execution sur Capias ad satisfac. (ou sur Statute Merchant, ou Staple) soit deliver hors del prison (& issint hors del execution) per brief de Privilege del Parliament, ad estre tenuz q. il poet estre prise apres in execution arere, & que le vic. ne fuit chargeable pur tiel delivery del prison, Dyer 60. Mes de avoid. tout ambiguity, le Statute de 1 Jac. c. 13. ad ore dore novel execution vers le destor, & auxi dischaige al vic. &c. pur tiel delivery del prisoner.*

Co. 5. 87.  
*Si conusor dun Statute Merchant ou Staple, est prise & morust in execution, uncore le conusor avera execution de ses biens & terres, Co. 5. 87. vide Stat. 21 Jac. c. 24.*

*Conusor sur Statute est prise & escape, uncore ces biens & terres, sur mesme le Statute, poent estre extend.*

Car coment que per Ley, unica tantum fiat executio, &c. ceo est destre intend d'un executio ove satisfaction.

Et nota que la est diversity inter un execution que est valuable, come de terres, ou biens, & execution que nest valuable, come del corps.

Auxy la est diversity inter un execution final, per que le party est satisfie (come lon le vic. levy les deniers del biens del Defendant, ou extend ses terres, & delivrer eux al Plaintiff, icy le Plaintiff accepting ceo in satisfaction, il ad le fine de son suit) & inter execution ove un quousque. &c. que nest final, come ou le corps est prise in execution sur Capias ad satisfaciend. &c. lintent de Co. 5. 87. que est tantum que le Defendant satisfier le Plaintiff, Et son imprisonment nest absolute, mes quousque le Def. satisfie le Plaintiff.

Ou 2. homes sont condempnes in Det, & lun est prise & morust in execution uncore lauter poet loyallyment estre prise in execution, Co. 5. 86.

Issint si deux sont oblige joynment & severallyment in un obligation, Et lun est sue, condempne, & prise in execution, uncore lauter auxy poet estre sue & prise in execution, tanque le Plaintiff soit satisfie in fait de son entier Det, Co. 5. 86.

Si home ad judgment in action de Debt, & puis le judgment utlage le Defendant, icy si le Def. soit prise per Capias utlagatum al suit le Roy, el serra in execution pur le Plaintiff. fil voet, Co. 5. 88.

Auxy in tous casles quant le Plaintiff poet aver Capias ad satisfac. & le Def. est prise per Capias pro fine, la le Def. est in execution maintenant, si le Plaintiff voet, sans aucun preir del party, Co. ibid.

Et in tiel casles si le vic. suffer tiel prisoner daller alarge, ceo semble destre escape, & que pur ceo le vicount est subject de payer le Plaintiff son Debt. P. Fitz. 121.

Et uncore vide Dyer 306. Ou home avoit judgment d'aver execution per default, sur second Scire fac' retourn nihil sur recogn. in Chancery, & fuit in execution in le Fleet pur auters causes, & le garden del Fleet monstre al Court que le Def. fuit in execution pur certain causes, mes ne monstre queux, & sans request le Plt. & le Court command le gardein del Fleet de garde le prisoner pur le Debt de dit recogn. Et apres le gardein luy lessa alarge, le conusee nient satisfie, & fuit tenuis que le gardein ne fuit per le Ley chargeable al Conusee, pur le dit escape; Car le prisoner ne fuit unques loyallyment in execution al party Plaintiff, pur le Debt, eo que le execution fuit fait ad petitionem querentis, & execution sans request le Plaintiff, nest execution pur le Plaintiff, mes poet estre que il voile eslier auter execution.

Escape.

If the Sheriff, or any of his Officers, do suffer any prisoner being in Execution, to go at liberty before the Debt be satisfied, the Creditor may recover his Debt against the Sheriff, as is aforesaid. Co. 1. 44. & 8. 100.

So if the Sheriff or his Officer shall suffer any such prisoner to go out of prison by Bail, Mainprise or Baston (i.e. with a Keeper, or with the Servant of the Sheriff, Warden or Gaoler, &c.) before the Debt be satisfied, or without agreeing with the party, at whose suit he is in Execution, (except it be by the King's Writ) the Sheriff shall be answerable for the whole Debt. For by the Law those which are in Execution, ought not to go at liberty within the prison, much less abroad. Pl. 360.

## Cap. 29. Execution fur Capias ad satisfaciend.

148

abroad though with their keeper, or by Bailiff; but such Prisoner ought to be kept in *salva & arcta custodia*; yea, the Sheriff may keep such as are in Execution, in fetters, to the intent that they may the sooner pay and satisfie their Creditors; see the Statute made 13 E. 1. c. 11. & 1 R. 2. c. 12. Fitz 93. c. & 121. a. & Dyer 149. And yet see Sir Edw. Coke upon Lit. fol. 260. that Imprisonment must be *Custodia*, & non *pœna*; for Carcer ad homines custodiendos, non ad puniendos dari debet.

*Prisoner cometh  
serra demesne.*

Co. 3. 44. And yet note, a difference between the custody of one in Execution within the County (or Franchise) where the Common Gaol is, or where the Office of the Sheriff or Bailiff extendeth or reacheth, and where the Sheriff or Bailiff hath the custody of one in Execution, out of their County (or Franchise) by vertue of an Habeas Corpus, &c.

For if the Sheriff (or Bailiff of Franchise) shall agree that one who is in Execution, and under their Custody, shall go out of the Gaol, or at Liberty for a time, and then return, although the Prisoner return at the time, yet this is an Escape, and the Sheriff (or Bailiff of a Franchise) shall pay the Debt.

Co. 3. 44. But where the Sheriff, &c. hath one in Execution for Debt, and a Habeas Corpus cometh to him to have the Body in the King's Bench (at Westminster) at a certain day, and he carrieth his Prisoner to London (to an Inn, &c.) and the Prisoner of his own head goeth at large, and after cometh again to the Sheriff, so as the Sheriff at the day of the return of the Writ (of Habeas Corpus) doth deliver the Body in Court, this was adjudged to be no Escape, for that the commandment of the Writ is performed, sc. to have the Body in Court at such a day: And in such case the Sheriff may go and take what way or place he shall think to be most sure and safe for himself, and to carry his Prisoner.

If the Sheriff shall arrest one upon a Capias ad satisfac. and after the Prisoner is rescued from him, this is an Escape, and the Sheriff is chargeable for the Debt, Dyer 241. 10 H. 7. Crompton 207.

If the Sheriff shall arrest one upon a Capias ad satisfac. and shall not return the Writ, this is an Escape, and the Sheriff is chargeable for the Debt, neither may the Sheriff arrest the party again for the same cause, 4 E. 6. 13 H. 7. 1.

And yet if the Sheriff after the Execution duly done, shall satisfie the Plaintiff, he needss not to return his Writ, hic c. 54

Also by the Opinions of Coke and Billing. 15 E. 4. Br. Escape 11. where a man is in the Sheriff's custody upon an Execution, if the Sheriff shall carry his prisoner into another county, the prisoner may have a Writ of false Imprisonment against the Sheriff, for that it is against Law, and the Sheriff is no Sheriff in the County, and therefore the Prisoner shall be intended to be out of ward when he is in another County, except it be by the special commandment of the King, or his Chancellor, or other his Justices; for in those cases he shall be intended to be still in ward.

And

And yet sometimes the att or commandment of the King's Court is no sufficient warrant to the Sheriff, &c. to suffer a Prisoner in Execution to go at liberty, for there is a case reported by Master Serjeant Ben'low, Anno 16 El. how that W. Manser brought an Action of Debt against B. Anstey Warden of the Fleet upon the Escape of a Prisoner there in Execution for 1541. and the Defendant pleaded that H. Draycot who was in Execution, was before Bayliff to the Queen (of her Lands late parcel of the Monastery of Tucksbury, in the County of Staff.) and was found in Arrerages, for which he was committed to the Fleet by the Barons of the Exchequer, and after by their commandment, he suffered the said Draycot by baston (under the custody of one of his Servants) to go into the County of Derby, to gather up his Debts, &c. to pay the Queen; and pleaded all in certain, and upon this Plea, the Plaintiff demurred in Law, and after Argument, Judgment was given for the Plaintiff. Quod nota, & the like case in Crompt. Author. des Courts, fol. 106. One in the Fleet upon an Execution for the King's Debt (committed out of the Exchequer) was also there in Execution at the Suit of another out of the King's Bench, and after the Treasurers and Chancellers of the Exchequer commanded the Warden of the Fleet to suffer the Prisoner to go with his Keeper into Norfolk to hasten the payment of the King's Debt: Whereupon the party at whose suit the prisoner was there in Execution (out of the King's Bench) brought his Action of Debt against the Warden of the Fleet (in the Common Place) for the Escape, and yet the prisoner came with his Keeper to the Fleet again, and was never out of his Custody: And yet it was holden by the Opinion of all the Judges of both Benches (tempore Mariæ Regina) that the Action would lie.

16 E. Rot.  
1343.

Another like Case you may find in Dyer 297. and there it was adjudged, *Que si un soit in Execution, nul commandment del Roigne mesme, sans brief, est sufficient garrant de discharge le Keeper, &c. Et per mesme reason ne discharger le Vicount, Vide 7 H. 6. fol. 5. & 4 E. 4. fol. 17.*

And yet one being in Execution within the Cinque Ports, was brought before the Council at London, and that was held no Escape, Crompt. 214.

*Auxy si le vic. awera brief south Signet le Roy, commandant luy de lesser un in Execution, d'aller hors, que accordant lessa le prisoner d'aller hors ove baston, semble ceo ne excuse le vic. vers le party pur le Condemnation, Dyer 162. Vide Fitz. 89. aut. tiel Case.*

*Et per omnes Justic. de utroque. Banco Anno 4 & 5 Ph. & Mariæ, fuit tenus que un in Execution ne serra dismis per Protection de Servic. Regis, uncore fuit home very necessary pur le service le Royn, &c. Dyer 162.*

*Auxy Vide 13 H. 4. 17. Ou le vic. pur executer del commandment le Roy in sortions al's serra punish & ou nemy.*

Pea sometimes the King's Writ under the Great Seal, is no sufficient Warrant to the Sheriff to deliver a Prisoner, &c. See hic c. 21.

And yet see 14 H. 6. 1. Br. Prærog. 37. That he which is imprisoned (by Writ) for a Contempt, may be discharged by the King's commandment, by word without Writing: But Master Bro. maketh a Quære of it.

Also

## Cap. 29. Execution sur Capias ad satisfaciend. 143

Also if any Knight or Burghers of the Parliament (or any of their necessary attendants) shall happen to be taken upon an Execution, during the Session of Parliament, the Sheriff ought to deliver such Prisoner, being sent for by the House, Dyer 60. See hic cap. 21.

But if any Officer of the Chancery, or any necessary Officer in any other of the King's Courts, or any of his Majesties Servants shall happen to be taken upon an Execution, the Sheriff ought not to deliver them upon their Writ of Privilege; for then the party should be without remedy, if the Prisoner should be enlarged and set at Liberty, Crompt. Author. des Courts 48.

And note, That in as much as Escapes are so penal to Sheriffs Bailiffs of Liberties, and Gaolers, the Judges of the Law have always made a favourable construction as much as the Law will permit, in favour of the Sheriffs, Bailiffs of Liberties, and Gaolers, who are Officers and Ministers of Justice, Co. 3. 44.

*Mes sur Escape, Det ne gist vers le Heir, Nec vers l'Executors; car le offence n'est forsque Trespass, quæ moritur cum persona, Dyer 271. & 322.*

Co. 5. 88. *Auxy nota si home recover Det ou Damages vers auter, il poet eslier d'aver Capias, ou Elegit, mes sil prist le Capias, il n'avera le Elegit apres, nec è converso, 15 H. 7. 15. Vide hic antea tit. Elegit.*

*Nota que ou Capias gist in Process, la apres Judgment Capias ad Satisfaciendum gist, Co. 3. 12.*

*Mes le party n'avera Capias ad satisfac. Mes ou Capias gist in le Original, 11 H. 7. 15. Keeble.*

*Sur Recogn. la ne issera Capias in l'Orig. Nec Capias ad Satisfac. Vide hic ante Recogn.*

*Sur Attachment de Priviledge in Trespass Capias ad Satisfac. fuit agard per Ritche un des Attorneys del Bank, vers un Kempe, &c. 2 Eliz. Dyer 192. Sed per luy Quære si Capias ad satisfac' in Casu supra fuit bien agard, pur ceo que nul Capias, nec Process de Utlary gist sur le Original, sc. sur tiel suit de Attachment de Priviledge.*

*Nota que cestuy que recover Det ou Damages in Court le Roy per tiel Action ou Capias ad Respond. gist in Process, il deins un An apres le recovery poet aver un Capias ad Satisfac. &c. Mes si nul Capias ad respondend gist in le premier Action, donque le Plt. n'avera Capias ad satisfac. Mes doit aver un Fieri facias apres le An ou deins le An sil voil, Dr. & St. 18.*

*Auxi si un preia un Fieri facias, il poet apres aver un Capias, & apres le Capias, il poet aver le Elegit: Mes sil preia le Elegit, il n'avera james Capias, ne Fieri facias. Ou sil preia Capias, il n'avera un Fieri facias, Vide hic c. 28 & 30.*

*Nota auxy que devant le Statute de 25 Ed. 3. c. 17. un Capias ne gist in Det, Ne le Corps del Defendant, devant cest Statute fuit subject al Execution pur Det, (sinon in case le Roy.)*

*Sur Judgment in Action de Trespass, Capias ad Satisfac<sup>t</sup> gist deins l'an, a prender son Corps in Execution pur satisfaction del Damages: Mes ceo ne gist in ascun real action (come in brief de dower, ou auter Præcipe quod reddat) neque a le Common Ley, in Det, Detinue ou Accompt; mes in action de Trespass, ou tiel, Fitz.Exec. 164. Co. 3. 12. & Finch. 103.*

At the Common Law, the body of a man, nor his Lands, were not liable to an Execution for debt or damages, except only in the King's Case, or in some other special case, Plow. 441. Co. 3. 11.

Neither was the body of a man subject to imprisonment, by the Common Law, except in some special cases.

The Body was first subject to imprisonment for debt, by these Statutes.

52 H. 3. cap. 23. } Accountants.  
15 E. 1. cap. 11. }  
13 E. 1. { de Acton Burnel } for Debt upon a  
          { de Mercatoribus } Statute.  
25 E. 3. c. 17. for Debt upon specialty or contract, sc. by Capias upon the Original, &c.

The Lands, were first subject to be executed, sc.

The moiety by the Stat. 13 E. 1. (Westm. 2.) c. 18. which Statute giveth the Elegit, and is the first Statute which subjects the Land.  
The whole land by { 13 E. 1. de Merc.  
                              { 27 H. 3. c. 9.  
                              { 23 H. 8. c. 6.

*Levari fac.*

At the Common Law, where a common person sued a Recognizance, or a Judgment, for Debt or Damages, he had Execution in such case only of his goods and chattels, and corn and other present profit which grew upon the Land, to which purpose the Common Law gave to him two several Writs; the one, a *Levari facias*, by which Writ the Sheriff was commanded, *Quod de terris & catallis ipsius A. &c. Levari faciat præd<sup>a</sup> pecuniam, &c. ita quod eam habeat in, &c. tali die præfato B. (querenti) deliberand, &c.* The other Writ is called a *Fieri facias*, which was only, *de bonis & catallis*, Fitz. 101.

*Fieri fac.*

So then this Writ, de *Levari facias*, is given by the Common Law, (before the Statute of Westm. 2. c. 18. which giveth the Writ of Elegit, as is aforesaid.) And this *Levari facias* is only to be executed upon the profits of the Lands, (sc. the Corn and Grass growing) and upon the goods: & the Sheriff may hereupon take the Rents payable by the Tenants in execution for the debt, and bring them in Court; but he cannot seize the Land and deliver that to the party, by this Writ, &c. Plow. 441. a. & Finch. 101. And this ought to be sued within the year after the day of payment to be made by the Recogn. (or after the Judgment.) For after the year, the Cognitor (or Plaintiff) is now by the Statute of Westm. 2. c. 45. to have a *Scire facias*, whereby the Sheriff is commanded, that he give knowledge to the Defendant, that he appear in the Chancery, or before the Justices, at a certain day, there to shew what he can say, why he should not pay the Debt or Damages: And if he being warned, do not come at the day, or do come, and can say nothing why execution ought not to be done, then the Sheriff shall be commanded to do execution. See Fitz. 266. c.

*Scire fac.*

And

And if the Sheriff, upon the Levam facias, shall return that he hath levied part of the sum (sc. 20 l. part thereof, &c.) the which he hath delivered to the party, &c. now upon this return, the party which ought to have the Money, may have a Sicut alias levam fac' directed to the Sheriff to levy the residue of the sum, &c. Fitz. 265. h.

*In debt, le Execution quant al terre serra de quecunque ter. que le party avoit jour del judgment rendue. Viel Nat. bre. 165. 42 E. 3. 11. 2 H. 4. 14. & Finch. 101.*

*Mes quant al Chattels (coment que soit lease pur ans) le Execution serra for que de ceux que le party avoit jour de Execution sue: Issint que si le party vend ses biens bona fide, apres judgment, & devant brief de Execution sue, les biens sont liable al Execution, Finch. 101. Co. 8. 171.*

*Touts les biens queux sont al Def. al jour del Teste del brief de Execution, sont liable al Execution del Plt. Et coment le Def. ad vend eux bona fide, uncore le vic. poet eux seiser in les mains del vendee per le dit Execution, per curiam. Mich. 37 Eliz. & Co. 8. 171. que apres Execution agard, sale de biens coment bona fide, nest bon, mes serra liable al Execution.*

*Si le baron soit possesse d'un term pur ans in droit sa feme, sur un Execution vers le baron pur son debt, le vic. poet vender le term dur. le term dur. le vie le feme. Et issint ceo dun estate sur Statute Merchant, Statute Staple, Elegit, wardship (in Chivalry) & auters Chattels reals in possession, Vide Co. Lit. 351. a.*

*Mes un Estate pur vie, ou auter greinder estate ne est vendable per le vic. pur debt: Sed le terre serra extend al un Annual value, de satisfaire le debt.*

## C A P. XXX.

## Execution per Fieri fac'.

**A** Fieri facias, is a Writ judicial, that lieth for him which hath recovered any debt or damages in the King's Court, and thereup the Sheriff is commanded to levy the debt or damages of his goods, against whom the recovery was had. Et gist tous temps deins l'an & jour.

This Writ of Fieri facias is only against the goods and chattels of a man, sc. Leases for years, &c. Corn growing or sown upon the ground, or moveable goods, as cattel, corn in the barn, &c. household stuff, money, plate, apparel, &c. And this Writ also ought to be sued within the year after the Judgment, &c. Co. 3. 12. Vide Co. L. 290. b.

But here the Sheriff and his Officers had need to be very careful, how and after what manner they do execute this Writ; for if the leases or goods, which they shall take in execution, be not the defendants own goods or leases, but the goods of a stranger, altho' they may or do find them in the possession of the defendant (which is the best colour in law to prove them to be his, if the defendant notwithstanding

standing his sale or gift of them, shall still use them and take the profit and benefit of them) yet if it shall fall out and be found upon trial, that such goods and chattels be not the Defendants own, then the Sheriff or his Officers which shall take such goods in execution, (upon such a Writ) in stead of the Defendants goods; the Sheriff or Officer shall be a trespasser to the right Owner of such goods, and the Sheriff or Officer in such case shall pay damages to the Owner of the goods to the value of the goods so taken, and costs of suit; altho' the Officer hath delivered them to the Plaintiff in Execution, Keil. 119, 120.

Or if the Officer shall not deliver such goods to the Plaintiff in execution, but that the Sheriff shall return his Writ that he hath taken so much goods of the Defendants, and that he hath denarios illos paratos ad redd. to the Plaintiff, then is the Sheriff at a double mischief; for altho' the value of the goods be recovered against the Sheriff or his Officer, by the owner of the goods; yet the Plaintiff in the Action, may within the year after execution done, have a Scire fac. upon the judgment and the return made by the Sheriff, and thereby shall compel the Sheriff to bring the Money into the Court, and after the year the Plaintiff may have an Action of Debt against the Sheriff for it, if he be not otherwise ordered by the Court where the judgment is depending.

And therefore the surer course for the Sheriff in such case is either to keep the Goods, until the parties be agreed, or else to take good security of the Plaintiff to defend him and save him harmless, and to stay the returning of his Writs until he may be well advised what to do therein; But if he take a Bond of the Plaintiff, it is questionable whether it be good or no in Law, and not within the compass of the Statute of 23 H. 6. c. 10. to be taken colore officij.

But the safest and surest course for the Sheriff or Officer, is, to enquire by a Jury in whom the property of the goods is; or else not to take in execution, or not to meddle at all with any such goods as shall not plainly appear to them, to be the proper goods of the Defendant: For it seemeth that the Officer is bound at his peril, to take knowledge whole the goods be, or at least, that they be the proper goods of the Defendant: but being found by the Jury, that execute the Sheriff.

Also if an Officer shall arrest another man who is not the Defendant, or shall attach goods which are not the proper goods of the Defendant, in both these cases the Officer is a Trespasser; And if the Plaintiff shall shew unto the Officer the man or goods, and shall say to the Officer, that this is the Defendant, or these are the goods of the defendant, where they are not, there both the Plaintiff and the Officers are Trespassers, See Doct. & Stu. 150.

J. S. riding upon his Masters Horse to C. and there one enters a Plaint against J. S. the Servant, and attacheth the said Horse, whereupon the Master of the said Servant brought an Action of Trespass against the Bailiff which attached the Horse, and had judgment to recover against the Bailiff, &c. for that the Officer is bound to take knowledge whole goods he attacheth, Br. Trespas 99.

Goods pawned or gaged for Debt, cannot be taken in Execution: Nor goods demised, or letten for years: Nor goods distrained, Vide Br. Pledges 28.

When

When the Sheriff hath taken any Cattel in Execution, he may put them into a Castle or other place, where he thinks most fitting and safe to keep them until he can sell them, or he may keep them himself, till he can sell them.

But upon a Fieri facias, if the Sheriff shall levy the Money, and shall keep the same still in his hands, the party Plaintiff may have his Action of Account against the Sheriff. And if the Sheriff shall return Fieri feci, sed non inveni emptores, then a venditioni exponas shall go out; *Mes le party plt. n'aura unques un novel execution*, 13 H. 7. f. 1.

Upon a Fieri fac. to levy 20 l. the Sheriff returneth Quod Fieri feci 10 l. quas habeo ad diem, &c. at which day he hath not the Money, and a new Sheriff is chosen, here the Plaintiff shall have a Scire facias against the old Sheriff, to shew why the Plaintiff should not have Execution of the 10 l. and if the Sheriff cannot discharge himself, then the Plaintiff shall have Execution against the Sheriff by a Fieri fac. or Elegit 9 E. 4. fol. N. br. 165.

*Vide plus devant tit. Execution sur Statute Staple; & Execution per Elegit.*

*Est al election de cestuy que recovrer debt ou damages, de aver Execution per Fieri facias, ou per Elegit*, 13 E. 1. c. 18.

*Nota que Fieri facias gist tout foits deins le Ann. & jour, & apres l'an. & jour covient de suer un Scire facias. Terms del Ley.*

*Et nota quo apres le Fieri facias un home poet aver le Elegit; Sed non e contra; ensant que le Elegit est de plus haut nature que le Fieri facias.*

*Sur Elegit, Execution, & apprisement covient estre fait per Sacramentum* 12. &c. & nemy per le Vicount, mes auterment est de Execution per Fieri facias. Dyer 100  
Co. 4. 72.

*Sur Fieri facias le Vicount doit vender lease, ou term pur ans (sans enquire del value del Lease per Jury.) Vide antea Execution sur Elegit, Dyer 363. & Co. 8. 143. que le vic. est command & compell. per le brief de vend. For words of the Writ he Præcipimus tibi quod de terris & catallis præd' J. S. in balliva tua Fieri fac. Centum solidos, & illos habeas, &c. ad respond. &c. Register 58. Uncore le seifures del vic. ne aliter le property, tanque sont vendus, Dyer 99. & Gawdy Justice accord, Anno 3 Jac. Regis.* Co. 8. 96.  
& 171.

*Sur Fieri facias le vicount doit vender pur levier le det. Co. 5. 90. Vide Co. 8. 171. & 143. Et nul enquest besoin destre prise sur ceo.*

And yet upon a Fieri facias the Sheriff may either praise and sell the Goods without an enquiry, or else he may praise the Goods by a Jury, and then sell them, which seems to be the more safe and indifferent way.

*Sur Execution le vic. ne doit delivrer le argent al Plt. mes il doit delivrer ceo in Court, & le Court ceo delivra al Plt. per Cur. Mich. 36 Fliz. Vide 21 H. 6. fol. 5. & Fitz. 265. e. h. uncore ses Capias ad satisfac. ou ses Fieri facias, si le vic. pay le Money al Plaintiff, semble bon, &c. Vide hic c. 38.*

Reverse per  
Error.

Sur Fieri facias si le Vicount vend les biens, et apres le judgment est reverse in brief de Error, uncore le Defendant n'aura restitution de ses biens; mes le value del eux, pur que ils fuer. vend: Et ceux que issint achate tiel biens del Vic. poient loyalment enjoyer eux. Car le Vic. que fist le sale avoit loyal Authority a vender, et per le sale le vendee ad absolute property in les biens, &c. Et si le vendition del Vic. per force del Fieri fac' serra avoïd per subsequent reversal del judgment, donque nul voile achater, et per consequence nul Executi-on serra fait, Co. 5. 90. & 8. 96. & 143.

Et accordant a ceo est le case in Dyer 363. Lou le Vicount in Execution dun Fieri fac. vend un term del Def. per brief de venditioni exponas, et in Court de-liver les deniers al Plainiff, et puis le Judgment fuit reverse pur Errors, et per l'Opinion del Manwood, Dyer & Wray, le Term ne serra restore, eo que ceo fuit vend loyalment, sed le argent que vient in loco Termini serra tantum restore.

Sur Fieri fac. le Vicount execute le brief, mes ne return ceo, uncore bon, Vide hic postea c. 38.

Fieri fac. issuit vers un Vincent, et devant l' Execution il devy intestate. L'ordinary commit le Administration, et le Vic' levy l' Execution sur les Ad-ministrators, et deliver ceo al party; Quere si l' Execution fuit bien levy sur le Administrators, Dyer 76.

Le Vic. avoit Fieri fac. a luy deliver vers A. et apres A. morust et donque le Vic' (ou son Bailly per son garrant) execut. le brief, et fuit tenu per Wray & Gawdy que le Execution fuit bon et loyalment fait sur le Executors ou Ad-ministrators. Car les biens queux A. avoit al temps del Execution agard, sont liable in mains d' aucun estranger. Ou in quecunque mains ils devient, et don-que le mort del party ne poiet defeat le Execution. Ceo fuit le case dun Pierce, vers Housfe, Hoo, et auters, H. 33 Eliz. Rot. 31.

Auxi si home vend ses biens devant Execution, et apres judgment, et Fieri fac. issuit, vers cestuy vers que le recovery fuit, Ceux biens in le mains le ven-dee serra mise in Execution, per Wray & Clinch, in Casu prædict'. Vide hic c. 29. Contra.

## C A P. XXXI.

Now followeth the Manner and Forms of such Precepts, Process, or VVrits which go out upon the Original, and whereby the Defendant is called or brought into the Court, &c. and how the Sheriff, &c. is to execute the same, &c.

## Summons.

**M**rs. Lambard saith, That the Saxons (our Ancestors) their proceedings in Judgment was de plano, and without solemnity, They not using to call the parties by any Writ, Process or Writing, but to send for them by certain Messengers, which they termed Thems, That is to say, Ministers or Servants.

Also he saith, That when that manner of Summoning by Writ was first brought into use here, yet were not those Writs made in the King's Name, nor sealed by the Lord Chancellor; For it is to be seen in Mr. Glanville, That the original Writs of his time had this form, sc. teste Ranulpho de Glanvilla, &c. which then was the name of the Chief Justice of the King's Court, under whose sealing they passed abroad,

But at this day all Process are to be made out in the King's Name only, 27 H. 8. c. 24.

And all Writs or Process concerning the Common Law, shall be awarded under the Great Seal of England, 28 E. 1. c. 6. Vide plus hic fol. 222.

Summons is a Writ directed to the Sheriff, &c. to bring in the party by a day; Or to cite or warn one to appear at a certain day and to answer, &c. sc. in jus vocare, and the Summons must be made by (or in the presence of) two or three Summoners, and these Summoners ought by Law to be boni (vide Co. Lit. 158. b.) liberi & legales homines, and Neighbours, as it saith. And Sir Ed. Co. Lit. 6. b. saith, That a Summons of the Tenant must be proved by two or three Witnesses.

The Summoneas is the original Process, and goeth out of the Chancery.

And in real Actions the Sheriff's order to serve or execute this Process, is to go himself, or to send his Bayliff to the Land with the Summoneas, and there to garnish, cite or warn the Tenant or Party, by sticking up a white stick in his Land, which done, the Sheriff must return two common Pledges for the Plaintiff, and the names of the Summoners, thus,

Pledg.

Pledg. de prosequendo { Johan. Doo.  
Ricardus Roo.

Summonitores Infranominati J. S. (the Def.) { Ricardus Den { See hic  
Henricus Fen { cap. 45

*Mes si le Plt. intend de Outlawer le Def. donque il obtain un Summoneas direct al Vic. de garnish le party, & sur ceo le Vic. return nihil habet, & donque le Plt. procura Capias de prender son Corps, & apres un Alias, & Pluries, & donque un Exigent, come patet hic postea.*

*Se hic c. 50. another manner of Summons of the Recognitors in Mize.*

*Note, That this Summons (or warning) of the Defendant to appear and answer, &c. is so necessary by the Common Law, as that without the same, all the proceedings, plea, and the judgment after, are oftentimes frustrate and erroneous, and besides the Sheriff subject to danger and punishment.*

*And therefore, if a Man recover in a Writ of Dower or Waste, &c. by the default of the Defendant where in truth he was not summoned, (nor attached, nor distrained) the Defendant may have a Writ of Disceit against both the Sheriff and the Plaintiff, Fitz. Disceit 3. 5. & 56. & Fitz. N. Bre. 105. a.*

*Ac etiam per default de le Summons, le Defendant serra restore a son terre, Fitz. Disceit 7. & 48. & Fitz. 98. b. d. vide plus 7 H. 6. 38. & Dyer 353.*

*Auxi in brief vers A. & B. & E. (le feme de B.) per divers Præcipes, in le Summons E. fuit omis, & le brief abate pur ceo, 2 E. 3. 39. 8 E. 3. 44. & 27 H. 6. 6.*

*Auxi in brief de Dower per several Præcipes, le nosme del un des Tenants fuit omis in ceo clause del brief unde queritur, &c. Et auxi in le Summons, per que le brief fuit abate envers eux tous, Fitz. Bre. 671.*

*Et per le liver appel le Mirror de Justices, libro. 2. Nul est tenu a responder a nul Action real, ne mixt, avant Summons fait avener.*

*In a Writ of Trespass, the Sheriff returned Non est inventus, whereupon a Capias issued out to take the Defendant who afterwards came into the Court, and said that he was sufficient, and that he might have been summoned, and prayed a Writ to cause the Sheriff to come to answer to the King, and to the party, for his false return, and he had it, Fitz. Proces 55.*

*Nota le original Process in real Actions, est un summons, & apres sil ne veigne, un attachment isserra, & apres distress infinite, Finch. 94. & 106.*

*Mesme Proces (sc. Summons, Attachment, & Distress infinite) est in tous Actions personnels, si non in Trespass, in que est nul summons, mes tantum attachment, & distress, Finch. 106. Vide hic c. 112.*

*Mes per le liver appel le Mirror des Justices, lib. 2.*

*Real*

*Real Actions per Summons.*

*Personal Actions, per Attachment de Corps.*

*Mixt, primes per Summons, & apres per Attachments.*

Also note, That in real Actions the Sheriff (or his Officer) ought to summon the tenant upon the Land, Dyer 104. 22 H.6. 38. vide.

But in an Action of Debt brought for damages recovered in a Writ of Entry, &c. the Summons shall be to the person, 22 H.6. 38.

In a Petit Cape the Sheriff must summon the Tenant to answer to his default, and to hear his judgment in regard of his default, sc. upon his default, after plea, issue or demurrer, Finch. 87.

But in Grande Cape the Tenant shall be summoned to answer to the default, and further to the demandment.

In Summons in real Actions, the Summoners in the presence of the Pernors or Veiors, &c. ought to summon the Tenant, first to keep his day of the return (and to name that in certainty) to answer to the Defendant, &c. Secondly, They ought to name the name of the demandant: And lastly, They ought to name the Land in demand, Co. 6. 54. Vide hic c. 75. & 70.

This word Pernor semeth to signifie the pernor or taker of the profits of the Land; Quare, or the occupier or farmer thereof. Vide Finch. 86.

And the word Veior, to signifie such as are sent by the Court to take view of the place in question, for the better decision of the right. Minsh. Vide Co. Lit. 259. b. que le summons doit estre per summoners & weyors, & le ter. serra prise in le Roy per le Pernor. Vide Fitz. 86. que sur le Grand Cape le Vic' est de prendre le ter. in mains le Roy, per le view de legal homes queux sont appel weyors, les auters pernors.

And the Sheriff by force of the Præcipe, may come upon the Land with the summoners, and there summon the party against whom the Præcipe is brought; pea, if the Sheriff by information of the demandant shall summon the Tenant in another mans Land, the Sheriff shall be excused, Doct. & Stu. 150.

But the summons (in a Præcipe) ought always to be done in the day-time, (sc. between Sun-rising and Sun-setting) and not in the Night.

Note, That the Defendant (in every Writ) ought always to be summoned fifteen days (at the least) before the day of the return of the Writ, See Stat. 28 E. 1. c. 15. Fitz. 177. d. Br. Sum. 6. Et hic postea tit. Proclaim. & Attachm. Co. Lit. 134. b.

32 H. 6.

Note also, That the Sheriff, &c. cannot summon the party by a Gent-service, Gent-charge, Common, Reversion nor the like; for that the soil is another mans Feehold, Br. Return de breve 124. & Sum.

14.

And

And yet in case where Tenant for life prayeth in aid of him in reversion, and a Scire facias goeth out to warn or summon him in reversion, and the Sheriff returneth that he hath nothing in that County but the reversion of that Land in which he hath summoned him, it is holden to be a good return; for he shall be summoned in terra petita; and yet it was another mans Fræhold, 38 Ass. pl. 12. so Ass. pl. 8. & 45 E. 3. Vide Br. Sum. 12. 16. 21. 23. 24. Fitz. Ret. 101.

Where the Action is to recover the Fræhold of Land it self, the summons must be made in the same Land, Finch. 344.

Where the Action is brought against one as Heir. there the summons must be in Land that did descend, Ibid.

*Mes si le Tenant ou Def. appear nest material in quel terre il est summon,* Ibid.

Upon a Præcipe, if the Defendant be not Tenant of the Land, &c. yet the Sheriff is to summon him in terra petita, eo quod petens testatur quod tenens est, Fitz. Ret. 97. & Br. Summons 23.

And indeed the Writ commandeth (the Sheriff) not to summon the Tenant upon his own Land, but generally that he shall summon him, naming not in what Land; and then by a Maxim in Law it is taken that he shall summon him upon the Land in demand, Doct. & Stu. 150. Vide Kitch. Ret. bre. 54.

In a Cessavit, the Tenant was summoned in other Land which was not in demand; he shall not plead this; but if he makes default, and a Grand Cape is awarded, he may wage his Law of Non-summons; but if the Tenant appear upon the summons, it sufficeth in what Land soever he were summoned, Br. Sum. 7.

*Nota quant le Tenant appear per le summons, il ne prender advantage apres, adire que il ne fuit bien summon: Eadem Lex sil soit essoine, car tout ceo affirm le summons,* 46 E. 3. Br. Sum. 22.

If the Sheriff shall return one summoned who was not summoned, the Sheriff is punishable, Vide hic c. 70. & 85.

*Per person.*

Note also, if the Sheriff shall summon him which hath no Land, to or by his person, and shall return him summoned, it is good: And in Actions of Annuity, Covenant or the like, summons is the Process, whether the party hath Land or not; and where a man hath no Land where he may be summoned, there the Sheriff may summon him by his person, 33 H. 6. 42. 4 H. 7. 7. Br. Sum. 1. 7. 8.

And so in all personal Actions, the Sheriff must summon the Defendant by his person, 22 H. 6. 38. a.

A man may be summoned by his goods, sc. in Affizes.

In a Scire fac. against a Clerk, the Sheriff is to summon him only by his Land, (if he hath any Land) or by his person, but not by his goods: Wp. Priot, 32 H. 6. f. 11. Fitz. Ret. 23.

Of Novel disseisin and Nuisance, where the Original Process is an Attachment, sc. Pone per vadios & salvos Pleg. there the Defendant may be summoned, sc. Attached by his Goods, Finch. 345. & 96.

In a *Præcipe quod reddat* the Tenant vouches a Bishop to warrant, part of whose temporalities were in the King's hands; he shall not be summoned in his temporalities so long as they, or any part thereof remain in the King's hands, although there be assets in his hands whereon to be summoned, 38 E. 3. Br. Summons 17.

In a Writ of right of Advowson the Sheriff may Summon the Defendant in the Church, Br. Return. 101. 11 H. 6. *In Reglise.*

Also in a *Quare impedit*, the Sheriff may Summon the Defendant in the Church, per Martin 11 H. 6. Br. Return. 101. *Et issint per advise fait fait inter Lanceletum Episcopum Eliens. & Laithor de cel Liver. Anno 16 Jacobi Regis.*

In Attaint, the Tenant was returned Nihil, and it was testified that he had Land in another County, whereupon Summons went out thither: Quod nota 21 E. 3. Br. Sum. 18. And note also, That a Man may be Summoned in divers Counties, 21 E. 3. Br. Sum. 19. *In autre County.*

In a *Præcipe* against four, the Sheriff cannot Summon the one, but that is a Summons to all, 3 E. 4. Br. Sum. 10.

And yet in a *Præcipe* against two, the one is returned summoned and the other not, this is no good return, 5 H. 7. 27. Br. Return. 89. so that all the Defendants must be summoned by the Sheriff.

Plo. 398. Also in a *Præcipe* there ought to be two Summoners; for if there be but one, and the Tenant maketh default, and loseth by default, he shall have a Writ of Deceit against the Sheriff, &c.

Vide Thel. 312. *Nota, que si le Tenant ne fuit summon secundum legem terre, ne serra trye Ley gager per Pais, me le Tenant poit gager son Ley de non summons (ut supra) & uncore Corporation, Recluse, & Decrepite, ne poent fair lour Ley, mes lour summons serra trie per Pais, 33 H. 6. fol. 8. Thel. 334. quare. Co. 9. 31, 32. & N. bre. 177. & Finch. 86.*

Note also, That the Sheriff cannot summon himself; Et per ceo si le vic. suffer Recovery, ceo est Erronious, Dyer 188, & 266. Plo. 73, & Finch. 6.

The Book called The Mirror of Justices, giveth these Rules following (amongst others) concerning Summons.

Reasonable Summons, est quant il est testifiable per deux loials frank-testmoignes, fait a le person, ou a le meason, ou al tenement containis in le demand, avecque garnishment del jour, Lieu, party, Judge, & de l' action; et de resonable respice al mains de 15 jours de appear respons, &c.

Auxi le tenant poet prendre  
ceux Exceptions al Summons  
sc.

Que il ne fuit pas summon.  
Que il fuit summon troppe tarde.  
Que il ne resceiue le summons per nul frank  
home.  
Que il ne fuit summon & cest ore est error si le  
forsque per un summoner demandant proceed.  
Que il ne fuit summon al Freehold ou tenement  
in le demand.  
Que il ne fuit garvy, sur quel chose il responder,  
ou vers quel actor, &c. Ibidem Libro 2.  
& 3.

Nul est summonable forsque un fois par un cause.

Nul home serra arēt de estre Summoner, sil ne voil de son gree.

Femes, ne Sberiffs, ne Enfants, ne ul que ne est Freehold Tenant, poent estre  
bon Summoners.

## C A P. XXXII.

### Attachment.

**A**fter the Summons, if the Defendant or Tenant cometh not  
in, then there issueth out an Attachment, which is a Process  
authorizing the Sheriff, to go his House or Land, and there to take  
surety by pledges, or to attach him by his Goods, to the end that  
he shall appear and answer, &c.

Attachment.

The word Attachment in our Law signifieth a taking hold, or ap-  
prehending by commandment of Writ, and differeth from an arrest,  
or Capias, which is only of the Body of a Man, whereas an At-  
tachment at this day, is sometimes of or by the Body, and some-  
times of or by Goods, Minsh. See Master Lam. f. 95.

In Real Actions, le Original Process est Summons.

In Mixt Actions, le Original Process est Summons, & apres Attachment.

In tous Actions de Trespas, le Original Process est Attachment, & Distress  
infinite; Et sur le Attachment ou Distress return Nihil, trois Capias issent,  
& puis Process de Usury, Fitz. 92. a. & 100. d. Finch. 102. 106.

In auters personal Actions, le Original Process est Summons, Attachment, de  
Corps, & Distress infinite, Finch. 106. hic c. 31.

The form of the Attachment at this day is thus, *Pone per vadios  
& salvos Pledg. B. quod sit coram Justic. &c. ad respondend. A. de placito. &c.*

And note, That the Defendant cannot be Attached by his Land;  
nor by any parcel of his Freehold (as by a Clov, &c.) nor by any  
Chattel real (as a Lease for years or a Ward, or the like,) 7 H. 6.  
& 27 H. 6. Br. Attachment 1. & 4. & Finch. 94.

Neither

Neither may a table dormant, or any other thing which is fastened to the freehold, be attached (as a furnace, wainscot, doors, windows, pales or the like) 20 H. 7. 12. 21 H. 7. f. 26. And if the Sheriff shall attach a man by any such thing, he is punishable.

But an Attachment ought to be made by such Goods of the Defendants own as are moveables, sc. by mer chattels personal, (which may be forfeit by utlary,) and which shall be forfeited by the default of the party, sc. if he appear not, Br. 1. 4. See Dyer 199 pl. 54.

And this Attachment by Goods is only where the Process is *Pone per vadios, & salvos Plegios.*

Fitz. 93 H.  
3.

In debt, trespass or the like, a man ought not to attach the Defendant by his Horse whereupon he rides, where he hath other Goods whereby he may be attached; but if he hath no other Goods, then the Officer may attach him by the Horse he rideth upon, Br. 23.

Neither may a man be attached by his apparel, 7 H. 6. Br. 4. But this seemeth to be understood of his apparel which is upon his Body; for if his apparel lieth by him, &c. it seemeth he may be attached thereby.

Neither shall any goods be attached, but the proper goods of the party, and not goods that are pawned or borrowed, &c. 35 H. 6. Br. 20. tit. Attachment.

And therewith also agreeth the book of 13 H. 4. fol. 2. that if the Sheriff or his Officers shall attach any Horse in the possession of my Servant, for the Debt of my Servant, the Officer is a Trespasser to me, Vide Fitz. Trespass 14 55. Dr. & St. 138 & 149.

And therefore the Sheriff and his Officers are to be well advised by what goods they do attach a man, sc. whether they be the proper goods of the party attached, &c. for they at their peril ought to take knowledge to whom the property of the goods doth belong, See Fitz. Trespass 14. & 243. & Doct. & St. 149, 150.

An Attachment may be made by pledges as well as by goods, sc. *Per Pledges.* by finding pledges or sureties to appear, Br. Attachment 1. 7. & 9.

*Plegij dicuntur personæ qui se obligant ad hoc, ad quod qui eos mittit tenebatur, Minsh.*

*Et uncore semble que ceux Pledges ne serront lie in aucun somme (come mainpernors serront) mes si le party attach per pledges, (de vener & responder, &c.) ne appear, mes fait default, ceux Pledges serront amercy al Roy, &c. Crompt. Author. des Courts 169.*

*Ou le brief est, Pone per vadios, & salvos plegios, &c. la si le vic. trouve party, il poet luy attach per Pledges; Et sil ne luy trouve, il poet luy attach per ses biens, Fitz. Return. del vic. 57.*

Also yet if the Officer shall give warning to the Tenant in the presence of other honest men, to appear, &c. it is holden to be good enough,

enough, although he made no other Attachment by Goods or Pledges, &c. 34 Aff. Br. 9.

Note also, That a Bayliff sworn and known, may not make an Attachment without a Warrant; but a Warrant by word only is sufficient, Br. Attach. 15.

Also the Servant of the Plaintiff may make the Attachment, if so be he hath the Sheriff's Warrant to make the Attachment, 26 H. 6

*Per Parol.*

The Sheriff commanded his Bayliff to make an Attachment, and the Bayliff commanded his Servant to do it, who did it, and it was holden to be good, and all this was by *parol* without any Warrant by Writing, 27 Aff. p. 67. Br. Attach. 15, & 16.

But if a Stranger without any Commandment or Warrant from the Sheriff or his Officers, &c. shall make an Attachment, this is void, and besides the Stranger is thereby a Trespasser, &c. And the Sheriff may in these cases be examined by the Court, whether he made any such Warrant or no.

Note, That goods attached, if that they be quick Cattel, the Bayliff or other Officer may put them in the Common Pound; but if they be dead Chattels (as Hogs, Pigs or the like) there the Officer may take and carry them home to his own House.

*Forfeiter.*

Where the Sheriff or his Officers, &c. shall attach another by a *Colt* (or by any other goods) if the party shall not appear (at the day of his return) his *Colt*, or other goods attached, are forfeited to the King, and the Sheriff shall be answerable for the value thereof; and therefore the Sheriff, &c. had need either to keep the goods attached, or else to take Security to be saved harmless therein. 9 H. 7. 6.  
34 H. 6. 29  
Dyer 199.

*Nota, que le property del biens attach. ne sont hors del party, tanque le jour del return, & que il fait default; mes si al jour del return le party fait default, donque le vic. ou son Officer poit prendre tiels biens come forfeits, coment que il ad lessa tiels biens ove le party que fuit attach. per eux: Et sic nota que sur attachment, le vic. ou auter Officer poit (a son election) prendre les biens attach ove luy; ou poit lesser & relinquier eux ove le owner, & apres prendre eux sur default del appearance per le owner, 9 H. 7. 6. Br. Attach. 10.*

Also it seemeth that the Sheriff or his Officer, upon their Attachment and leaving of the goods attached with the owner (as aforesaid) that they may take an Obligation of the owner of those goods for the delivery of the same goods, if the owner shall make default of appearance; and that such obligation shall be good.

*Nota auxy, que per essoine, l' Attachment (ou les biens) attach est save, non obstant que il ne appear al jour d'essoine, Br. Attach. 3. & 11. Mes 34 H. 6. 29. contra. On cestuy que fuit return attach. in trespass, per 20 Oves Precij, &c. le Defendant fuit essoine, &c. & al jour il fait default, il forfeiter l' Attachment; mes per Ashton fil appiert al jour del Attachment, ou al jour del essoine adjourn, il s'averat l' Attachment, aliter non.*

Nul biens attach seront forfeit, mes in Court de Record, & nemy sur Justicies in

*in le County, per ascuns opinions, tamen alii è contra, sc. que le chose attach devant le vic. in le County Court, ou sur Justicies, ou in ascun Court Baron, sera forfeit, hic cap. 112. vide Br. Attach. 2 & 19. & Forf. 2. 4.*

7 H. 6. Br. Attach. 4. **A Woman covert shall be attached by the Goods of her Husband, for the Husband is to bring in his Wife, Vide Fitz. Attach. 2. & 4. Forf. 17. & Return. 73.**

**And a Monk should have ben attached by the Goods of his Sovereign, 7 H. 6. Fitz. Attach. 2. contin. 17. & Retorne del vic. 73.**

**And per some opinions have ben to the contrary in these two last cases; for that if the Wife of Monk, shall make default of appearing they shall thereby forfeit the Goods attached: and so they shall forfeit that which is none of theirs, which cannot be, 7 H. 6. Fitz. Attach. 2.**

27 Aff. p. 67. **The Defendant ought always to be attached fifteen days (at the least) before the day of the return of the Writ, Br. Attach. 1. 5, 6. vide Co. Lit. 134. b.**

**And if the party be not summoned and attached, it is Error, 19 Aff. 7. Br. Error 116. And the Officer shall be amerced, Liber. Intrac.**

*Auxi le Tenant ou Def. poet plede Nient attach per 15 jours, Fitz. 2. 14. 34.*

*Mes nient attach generalment n'est pas plee, pur ceo que il est contrariant al Retorne del vic. 2 R. 2. fol.*

*Nota trial de nient attach per 15 jours serra tantum per examination del Officer que fait le return, & sil soit absent, l'attachement serra intend d'estre fait accordant al Ley (sc. per 15 jours) & le Def. serra agard de responder, Vide Br. Attach. 6. 12. 17, & 18. Co. 9. 31.*

*Uncore in 26 H. 6. Br. Attachment 17. In assize le tenant plede nient attach per 15 jours, & le plt. dit que son servant fist le Attachment, & il fuit demand, & esteant absent ne poet estre examin. per que novel Attachment fuit agard.*

*Auxy nota que in Bank le Roy ils allow attachment in ass. de novel diff. de 8 jours, & de meins, Br. Attach. 13. vide ib. 5. & 8.*

Vide Fitz. 94. b. **Quant le Def. adestre Attach in Real Actions, & ne appear sur son attachment; Ou sil appear & apres fait default, donque isser le grand distress, per que le vic. est command a distrain. le def. per tous ses biens & chattels queux il ad deins mesme le County; & auxi de respond. al Roy les issues de ses terres & d'aver le def. in Court ad respond. & ad Audiendum judicium suum de pluribus defaltis, vide le form del brief, Fitz. 94. & St. 52 H. 3. c. 9.**

**Nota quod pro transgressione facta contra Coronam Regiam, quæ tangit vitam & membrum, defendens sive delinquens Attachiatuſ erit per Corpus.**

**Et pro transgressione facta contra pacem Regiam (sicut de verberatione, de clauſo fracto, de bonis asportatis, de arboribus succis, & de similibus) defendens Attachiatuſ erit per Plegios, vel aliter.**

Sed in casu de injusta detentione Catallorum, Replegiare, de Debito, & similibus, in horum aliquibus defendens Summonendus est, & in aliis Attachiendus, juxta eorum naturas:

*Et le liver appel les mirror des Justices, lib. 2. est a tiel purpose, sc.*

*Les Attachments des offences mortals seront per le Corps, sans Replevin.*

*Les Attachment des choses ou offences personals, sont auxy per le Corps, mes serra Replevin.*

**Note, That in all Trespasses the Process is an Attachment; so that if a Capias goeth out first, and the party taken thereby, he shall be dismissed, Finch. 355.**

## C A P. XXXIII.

## Capias ad Respondendum.

*Capias.*

**S***I nihil soit retourn sur le Summons, Capias issera per le Common Ley. Fitz. Wast. 45. & ceo Process est de prender et imprison. le party &c.*

*Auxi si nihil soit retourn sur le Attachment, ou Distres (in Trespass ou autre personal Actions) donques issera Capias, Alias, Pluries, et Exigent, Fitz. 92. a. Terms del Ley tit. Process.*

*Mes in divers actions sont divers manners de Process, que est plus alarge declare per Fitz. in son Natura brevium.*

Capias est de deux sorts.	{	devant judgment,	Capias ad respondendum.
		apres judgment ceo est quadrup.	Capias ad satisfaciendum.
			Capias pro fine.
			Capias utlagatum.
			Capias ad valentiam.

*Nota que est un rule in Ley, que in tous actions Quare Vi & armis, Capias (ad respond.) gist, et ou Capias gist in Process, la apres judgment Capias ad satisf. gist. et la le Roy avera Capias pro fine, Co. 3. 12.*

Sur le Capias ad respond. si le vic. retorn, Nihil habet in balliva sua, &c. tunc issen.	{	Alias Capias.
		Pluries.
		Exigent.

**Note, That if the Pluries be not served, it is a contempt in the Sheriff, whereupon an Attachment lieth against him, 2 E. 4. fol. 1.**

*Si le Def. ne soit prise, ne render luy mesme sur le alias ne Pluries, donque sur Non est inventus retourn per le vic. la issen un Exigent (ou process de utlary) viz. un Exigi facias direct al vic. de proclam le party in 5. several Counties, sur le jur de son County, apres queux proclamations sil ne appear, le vic. retorn luy, Quinto exactus, & non est inventus, et ideo utla;*

*utlagatus ; Sinon que il ad primes purchasé un Superseas de surceaser, &c.*

*Mes nota que Exigent ne issera devant 3 Capias agard', &c. 8 R. 2.*

*Devant le Statute de 25 E. 3. c. 17. un Capias ne giser in det, ne le corps del def. ne fuit subiect al Arrest pur det sur specialty, ou contract, &c. Vide hic antea Execution sur Capias.*

*Co. 6. 53. Le person (ou corps) del Baron, ou auter Peer del Realm, ne de Countesse ou Baronesse ne serra arrest in det, outrespas, mes in cases de contempt ils poient estre arrest, Co. 6. 52. &c. Et uncore si Capias, ou Exigent soit agard vers tiels (sur det ou trespass) l'officer poit bien justifie de execute ceo.*

*Capias ad satisfaciendum est breve de execution apres judgment, de que vide hic antea fol.*

*Capias pro fine est lou un per judgment est fine al Roy, &c. sil ne discharge tiel fine accordant a le judgment, son corps pur ceo est prise & commit al prison, tanque il ad pay son fine al Roy, ou done security pur le paiment del ceo.*

*Capias utlagatum gist vers luy que est utlage sur ascun suit, & sur cel brief il serra prise, & mise in Prison, sans bail ou mainprise, pur ceo que il ad fait contempt encounter le Ley.*

*Nota que in Treason, & mort de home, la serra forsque un Capias, soit in case de Murder ou Homicide : ) mes en auters Felonies (come in Burglary, Robbery, & Larceny) la serra deux Capias : — Et in Mayhem la serra trois Capias, devant le Process de Utlary, Br. Process 149. Fitz. Co. 234. Finch. 69.*

*Capias ad valentiam, ceo auxi est apres judgment, & gist lou home est implede de certain terre, & vouch a garranty un auter, & il ne scarvoit pas barre le demandant, issint que le demandant recover, donque le voucher recovera tant in value vers le vouchee, & donque issera cel brief de viel Nat. br. 179.*

*There is also a Capias in Withernam de Homine, &c. See hic Retorn de breve de homine replegiand.*

*There is also a Capias in Withernam de Averiiis, &c. See hic breve de Withernam, & tit. County Court.*

*Note, That where the Sheriff hath arrested one by force of a Capias ad Respondendum, if the Plea shall happen to be discontinued, by the death of the King, or by any other way, there the Sheriff of his own authority may suffer his prisoner so arrested, to go at Liberty, Keil. 2. hic c. 126.*

## C A P. XXXIV.

## Venire Facias.

*Venire facias.*

**T**his Writ of Venire Facias is of two sorts :

The one is to cause the party, sc. the Defendant to come in, and answer, &c. and this but as a Summons to warn the party to appear, &c. And upon this if the Defendant be returned sufficient, and maketh default, then a Distringas shall be awarded : But if a Nihil habet, &c. be returned at the first, then after the Venire fac' there shall go out a Capias, alias, pluries, &c. Exigent.

The other is after appearance, when the parties be at an Issue, then the Plaintiff or Defendant shall have this Writ to cause the Sheriff, &c. to impannel and return a Jury, and this also is but as a Summons to the Jurors.

If upon this Venire fac' the Sheriff shall return the names of the Jury, and if they do not appear at the day, then shall go out an Habeas Corpora Juratorum, and after that a Distringas Jurator. to detain them until they come, &c. N. bre. 171. Plushic c. 77.

There be divers other sorts of this Writ (of Venire fac') as you may see in the Table of the Register Judicial, verbo venire fac' all which the Sheriff is to execute, as the Writs themselves do direct.

## C A P. XXXV.

## Distringas.

*Distringas.*

**T**his Writ is directed to the Sheriff, &c. commanding him to distrain the party for his, or the Jury for their appearance, &c. or to distrain for the King's Debt, &c. for this see hic antea cap. 11. Regist. 77. b.

*Mes ou home est Attach per son Corps, la nul Distr. issira apres.*

A Distringas for the appearance of the party to answer, as also for the Jury shall go out infinite sc. until the party cometh in and appear, Fitz. 2. 59.

*Ceo est dit distres infinite, quia ceo issir perpetualment tanque il appear,* Fitz. 59. b.

And this Distringas is a Process to distrain the parties, or Jury, by their Goods, and the Issues of their Lands, to come and appear, the which

which they shall lose and forfeit to the King if they come not, Fitz. 59. b.

Britton cap 71. saith', That this distress for appearance is of two sorts; Personal, by taking the moveable goods of the party, and detaining them for the security of his appearance to the suit.

Real is made of the moveable goods; as the Grand Cape, and Petite Cape.

The Wife shall be distrained by the goods of her Husband, and these shall be returned by the Sheriff in Issues, and shall be forfeited if the Wife come not, Fitz. Attach. 4.

*Nota que ceo distress infinite semble d'estre al Common Ley, in lieu de que le Grand Distress est ore in divers cases, Vide Stat. 52 H. 3. c. 7. & 9. & Westm. 2. c. 7. & 9. & hic antea c. 32.*

And this grand distress is when the Defendant hath ben attached, and yet appeareth not: or when he appeareth and after maketh default, hic cap. 31. i.

The great diversity also of this Writ (of Distringas) as you may see in the Table of the Registers Judicial, verbo Distringas.

Plus hic Retorn de Distring. c. 56.

If the Sheriff return too small Issues upon any Distring. See hic cap. 41.

Scire facias.

Terms del Ley. Scire facias est brief judicial, direct al vicount, &c. Et est de garner home de venger et monstre cause al Court, &c. quare execution dun judgment que est pas, ne serra fait: Mes cest brief ne serra grant devant que l'ann et jour soit passe apres les Judgment done. Scire facias.

Upon this Writ of Scire facias it seems that the Sheriff hath no more to do but only to warn the party to appear, &c. according to the Writ, and then to return the same: See hic postea c. 63.

There be divers other sorts and manners of Process, as well in Actions real as personal, which you may see at large in Fitz. Natura brevium.

*Nota que tous Process serra fait in Nome le Roy tantum, 27 H.8. cap. 24.*

*Auxy nul brief ou Process concernant le Common Ley serra agard south ascun del Petite Seals, 28 E. 1. c. 6.*

## C A P. XXXVI.

## Return of Writs.

**R**eturns are nothing else but the Sheriffs answer, touching that which they are commanded to do by the King's Writ, and are but to ascertain the Court of the truth of the matter; and yet this seemeth to be the most difficult thing belonging to their Office; for the Sheriff must be very careful and circumspect that he make these returns according to Law, both for substance and form; otherwise he shall not only endanger himself to be amerced, or sued for the same (as you may see hic postea c. 126. &c.) But also he shall indamage the parties, and may hazard the Cause or Suit it self: For you shall find that Judgments have ben often stayed for defaults apparent in the Sheriffs return; yea, and that Judgments have ben also reversed, by Writs of Error, for such cause. See 5 E. 4. fol. 109. & 9 H. 6. Br. Ret. 43.

*Note.* That in the execution of all Writs and Process of Law, the Sheriff and his Officers, must therein do all that which they shall be commanded to do by the Writ it self, and they must pursue the effect thereof in every behalf; and they may proceed no further, otherwise in the execution thereof, than they are authorized by the Writ: And besides the Sheriff is to return the same Writ into the Court whence the Writ came.

But where the Writ or Process is directed to the Bishop, there the Bishop is to make return thereof; and so where the Writ is directed to other persons (as to the Coroners, &c.) they are to make return thereof.

For the manner and form thereof of returns of Writs; first they must be made according to the ancient course, and according to the Presidents, and by the usual words, otherwise they are not good, See hic c. 56. 70. & 78. 2 H. 7. f. 8.

*The form.*

*Knights.*

And therefore in a Writ of Right, the Writ to the Sheriff is to return four Knights, to chuse the grand Assize returnable such a day, and the Sheriff returneth that they were no Knights but Furgesses, whereupon the Sheriff was amerced; and another Writ went out, &c. and thereupon the four Knights were demanded, who came to the Bar girt with their Swords, &c. and so it seemeth by the Opinion of Master Brook, that the Sheriff must return them Knights, altho' they be no Knights; for so be the Presidents, as you may see hic postea cap. 57. But if they have a sufficient Estate of Lands within the County, it seemeth sufficient though they be no Knights: See the like case and reason given given, Fitz. 164. a. 7 H. 4. Br. Rot. 106. Vide Plouf. 117. & 225. a.

Wassie was assigned in S. the return must not be quod accessit ad S. but quod accessit ad locum vastatum, 27 Hen. 8. Br. 2.

*Vobis certifico.*

Upon a Scire fac' the Sheriff returneth Ego R. O. Ar. vic. &c. vobis 1 H. 6. b. certifico

certifico; it is not good, for it ought to be vobis Justic' infra scripto  
certifico.

And yet in a Scire fac' upon a fine, the Sheriff returned Scire feci, &c. quod sit coram vobis ad diem & locum. &c. Exception was taken for that by this return he might be garnished to appear before the Justices of the King's Bench, Common-Pleas, or any other Justice; &c. but the return notwithstanding was allowed, Fitz. Retor. 118. 26 E. 3. And so in the former case, vobisifico may seem to be a good return, for that this word vobis (in both these cases) shall be referred to the Justices contained in the Writ, &c. 3 H. 6. Fitz. Return. 3.

Venire fac' 12, &c. le Vicount return Venire feci, & non executio istius brevis, & auxi le return for/que 12. & pur ceux causes il fuit chaise d' amender ceo, 2 H. 7. Br. 84. Fitz. Retor. 34.

So in a Habeas Corpora Jurator' the Sheriff must return them attached, and not quod habet corpora. And so in a Distringas per omnes terras, he must return Exitus, &c. 2 H. 7. f. 8. Br. 84.

And yet se Liber Intrac' fol. 388. b. where in a Distring. the Sheriff returned quod J. & A. distr. sunt per catalla ad valenc' 116.

Also in a Præcipe quod reddat, if the party yield the Land; or in Debt, if he pays the Honey; yet these are no good returns (and yet the Writ is Præcipe quod reddat le terre, ou le det) but these returns must be made, according to the ancient course, 2 H. 7. Fitz. 34. Vide plus Fitz. Return. 116. hic c. 73.

16 H. 7. The Sheriff returneth, quod virtute præcepti, &c. cepit corpus de J. S. and exception was taken thereto, for that the return was not virtue brevis, &c. and yet it was holden to be a good return; for the Sheriff may take one in Westminster-Hall, by the commandment of the Justices without any Writ. Virtute præcepti, virtute brevis.

In the return of garnishment by A. B. and C. D. these words probos & legales homines seem material (for else the Summoners may be persons attainted or outlawed, &c.) and yet if the Sheriff returneth Scire feci per A. B. & C. D. without the words probos & legales homines, it is sufficient, especially if the defendant appears, and it may be amended, 33 H. 6. 35. 8 H. 6. 27. & 44 E. 3. 36. Fitz. Return. 8. & 25. Probos & legales homines.

9 H. 6. 57. The Sheriff ought not to return quod defend' nihil habet, prout sibi aliquo modo constare poterit; vel non est inventus prout ei constare poterit, but he ought to return directly, quod nihil habet, vel non est inventus, otherwise he shall be amerced, Fitz. Return. 9. Prout constare poterit.

The Sheriff upon a Distr' Jurat. returneth, quod breve adeo tarde sibi venit, (or deliberat. fuit) quod illud exequi non potuit propter brevitatem temporis, and it was holden a good return, Vide 21 H. 6. 51. Br. 52. Fitz. Return. 37. and yet by the book 2 H. 4. fol. 7. upon a Capias, Tarde is no good return, Plus hic c. 53. Tarde.

Et nota que le vic. poet in chescun brief, Return Tarde, sinon in un attachment, & sur un Capias.

But if the Sheriff shall make such a return, where he hath sufficient time to serve the Writ, he shall be amerced, &c. or rather he shall yield damages to the party grieved, according to the Statute of 13 E. 1. 39. Abr. d'Ass. fol. 137.

So if the Sheriff shall return mandavi ballivo libertatis, qui mihi sic respondit, quod breve adeo tarde venit, quod illud exequi non potuit, &c. There the Sheriff shall be amerced; for it shall be intended that the Writ came to the Sheriff soon enough, and that he hath detained or kept it by so long time, where he might have made deliverance, &c. And indeed the mischief is great which may ensue upon this return; for by this means the Plaintiff shall never come to have his Process served, at least in time, 2 H. 4. fol. 7. for this last.

Non inveni, for,  
Non est inven-  
tus.

The Sheriff returned non inveni partem, &c. for non est inventus; 9 H. 6. f. 12. and the party being thereupon outlawed, assigned this for Error, Br. 43. and it was adjudged to be Error, and not to be amended.

Mandavit for  
Mandavi.

The Sheriff returneth quod mandavit ballivo de E. &c. for mandavi ballivo, &c. and was therefore amerced.

Et jeo aye view le report d' un case in Communi Banco, que Mercer esteant utlage al suit d' un Hower, move pur a voider le utlary, pur ceo que le vic' return le Exigent sur le dorse del brief sic, videlicet Superdictus Mercer, lou doit estre Superdictus for infranominatus Mercer, car riens fuit supra escry mes infra; Sed tous les Justices tient que nient obstant ceo, le Return soit bon: Et per Curiam si le vic. ust escry le Return, in le inner side del brief & nemy sur le dorse del brief uncore ceo serra bon. Et per Windham si condition dun obligation escry sur le dorse soit in ceo form, &c. si prædict' J.S. &c. lou doit estre infranominatus, uncore ceo serra bon, car l'intent est tout un, & adonque les parols serra prise assés significant.

Nomina Manu-  
capt & Sum-  
monit', &c.

Also upon a Distringas Jurator', the Sheriff ought to return the Names of the Manucaptors of the Jurors, Br. Retor. 86.

In a Scire facias to execute a Judgment or Fine, the Sheriff ought to return the names of the Summoners and Deiers, 3 H. 7. 8. Br. Ret. 86.

So upon the Grand Cape, the Sheriff ought to return the names of the Summoners and Deiers: Ibid.

Issues.

Also upon the return of a Turp, the Sheriff is to return Issues upon every person impanelled and returned by him, &c. upon the return of the Habeas Corpora Jurator. and upon the Distringas Jurator not upon the Venire facias, as it seemeth.

And yet in these former cases, if the parties, &c. shall appear and plead, (it seemeth) tho' the Sheriff, &c. shall omit to return the names of such Manucaptors, Summoners, Deiers, or shall return no Issues the return shall be amended, and shall be no Error: But yet Mr. Brook holdeth it to be Error if the return be not good, notwithstanding any appearance: Ideo quare, vide 8 Hen. 5. fol. 2. b. 3 H. 7. f. 8. Br. Ret. 86.

*Issint apres le Tenant ad appear in Court, il n'avera advantage d'ascun default in forme del Return; mes si ceo ne soit ben, poet estre amend. per Prisot,* 33 H. 6. fol. 31.

The Sheriff in a Replevin returneth that the Cattel are in a Fort, *Que ne poet faire deliverance.* Castle or Park, so that he could not make deliverance, &c. It is not good, but there he shall be amerced for such his return; for that he might have taken Possesse comitatus, and so have made deliverance, 8 H. 4. Fitz. Retor. 48.

If the Sheriff shall return a resistance, it is not good, for he should have taken the power of the County, &c. But he shall be amerced for such his return; for that it tendeth to the dishonour of the King and his Crown, 13 E. 1. c. 39. *Sæ* Fitz. Execution 147. & Retor. de vic. 88.

The Sheriff returneth a Rescous, it sameth not to be good, *Vide Rescous.* Br. Retor. 66. 39 H. 6. The reason is, for that he might have taken Possesse comitatus, as aforesaid. And yet *sæ* the Books 10 E. 4. fol. a 7. & 3 Hen. 7. fol. 11. the Sheriff returned a Rescous; and in the one Book, for that the place where the Rescous was made; and in the other, for that the place where the Rescous was commanded to be made, were not certainly set down, therefore the returns were holden to be insufficient, and the Sheriff amerced therefore, whereas otherwise the Sheriff's return of the Rescous had been allowed: *Ideo quare & vide hic Return de Capias.*

Dyer 69.  
pl. 29. Fitz.  
Retor. 32.  
Br. Retor.  
88. Plus  
hic. 54.

Also in the Book of Entries, tit. Rescous f. 579. c. d. you shall find divers forms of Rescous returned by the Sheriff, *Plus hic c. 54.* And note, That where the Sheriff shall return a Rescous, he must shew in what place, day and year, the same Rescous was made, Fitz. Attach. 1. Return. 32.

Also a Rescous returned against one without any Addition, is good, Br. Exig. 49 & 13 H. 7. 21.

But Quære if the Sheriff by his former return doth not charge himself, especially if that it may appear that he once had the body, &c. *Vide Dyer 212. & 13 R. 2. Fitz. Retor. 74. lou sur un Capias le Vic' return Cepi Corpus, & illud deliberavi Constabul. Castri de S. &c. et un Abbe la vient Vi et Armis, et luy reprist hors de son gard, &c. la fuit tenu per Curiam que le Vic' ad charge luy mesme per cest Return.*

Upon a Capias the Sheriff returned, that the party committed Felony, and took sanctuary, which privilege he could not break, this was a good return: *Sæ* Br. Retor. 29. & 46.

But if upon a Capias the Sheriff had taken the Body, and then had come with his prisoner along by a Franchise, &c. and then the prisoner had claimed the Franchise: Here it should have been reputed the folly of the Sheriff to bring his Prisoner by such Franchise, and the Sheriff was chargeable with the Body, notwithstanding such Return, 2 H. 4. Br. Esch. 38.

Upon

*Arrest de vant.*

Upon a Capias the Sheriff returneth, That before the coming of the Writ, the Defendant was taken and detained in Prison, by force of a Warrant from a Justice of Peace in the County, for the finding of Sureties for the Peace, &c. yet the Sheriff ought (as it seemeth) to bring in the party into the Court, and then after that the Plaintiff hath counted, and the Defendant hath put in his answer, he shall go under Mainprise, and be remitted to the Sheriff for to answer in the County before the Justices of Peace, &c. Br. Respon-  
see 9 H. 6.  
4. i  
2 H. 7. fol. 2.

Upon a Habeas Corpus directed to the Sheriff against any man condemned, or in Prison, upon an Execution, &c. the Sheriff ought to return the truth and cause of his former Imprisonment, and withal to bring in the Prisoner into the Court, &c. *Sic hic postea c. 54. & 63.*

Upon a Corpus cum causa, or other Writ, directed to the Sheriff, if he shall return that he hath commandment to surcease (*commandement soit souz Privy Seal direct a luy per le Roy*) yet if he shall not execute the Writ, he shall be amerced, *Vide hic cap. 63.*

*Inhibition.*

The Bishop being commanded to certify Matrimony, &c. certifieth that he could do nothing, by reason of an Inhibition to him directed out of the Arches, and it was holden no return; for he ought to perform the King's Commandment, notwithstanding the Inhibition, 36 E. 3. Br. Retor. 112.

*Clerk.*

In a Scire facias against a Clerk that is beneficed (upon a recovery in a Quare impedit) the Sheriff returned, quod Clericus est beneficiatus, &c. and therefore (by some opinions) the Sheriff was to be amerced; for here the Sheriff should have summoned him, &c. And yet it is a good return, quod est Clericus beneficiatus, non habens laicum feodum. Et quod non est inventus; for then he cannot be summoned if he be not found, nor hath Lay-fac. 32 H. 6. 11.  
Br. 124.

Note, That the Sheriff is not to return quod Clericus est beneficiatus, &c. but only in Cases where a Capias or Distringas goeth out (which are a Cohercion) or an Attachment, as it seemeth, Finch. 354. Ibid.

Also in a Scire facias against a Clerk, the Sheriff is only to warn or summon the party, by his person, or by his Land, if he hath any Lay-fac, 32 H. 6. 11. Fitz. Retor. 23.

Where the Sheriff (upon a Scire facias) returneth quod Clericus est beneficiatus, Non habens laicum feodum, there shall go a Writ to the Bishop to sequester his Benefice, *Sic hinc* 20. & 59. K. 47. 13  
H. 4. fol. ult.  
2 E. 4. 1.

*Baron & feme.*

In an Assize against the Husband and Wife, the Sheriff returneth the Husband attached, and the Wife nihil; quare, if that be a good return; for by the better opinion of the Book 7 H. 6. the Sheriff should have attached her by the Goods of her Husband: And yet the Book, 48 Ed. 3. 25. & 49 E. 3. 1. Fitz. Ret. 73. it seemeth that the Wife shall not be attached by her Husband's Goods; but the Sheriff shall return Pledges upon the one and the other: Ideo quare. Br. attach. 4

2 H. 6. 5. In a Scire facias against the Husband and Wife, the Sheriff returned that they are divorced, and was therefore amerced; for persons that are divorced may have garnishment. Quare & vide 1 H. 6. 2. Br. Ret. 63. Fitz. Ret. 1.

In a real Action, if the Sheriff shall return the Tenant a Woman Covert, or an Infant, the return is not good, Dyer 104.

Utlary returned by the Sheriff upon an Infant, is a good return, so as the Infant be above the age of fourteen years, 2 H. 5. f. For an Infant is impleadable by the Law, and for his contumacy or contempt shall be punished, as a Man of full age shall be, Dyer 104.

14 H. 4. 12. Upon a Scire facias against Executors, the Sheriff returneth that they had sold the goods of the party dead before the Writ purchased, and had taken money or other goods for the same; and the Sheriff was amerced for this return; for he should have taken other goods of the Executors to the value thereof, &c. Fitz. Ret. 55. Executors.

Also, it had ben no return that all the Executors but one had nothing; for the Sheriff ought to make Execution of that which was in the hands of that one Executor, Fitz. Ret. 55.

9 H. 6. 57. The Sheriff upon a Fieri facias against Executors, returneth, quod nihil habent, post adventum brevis, prout sibi aliquo modo constare poterit, and for this he was amerced; for he ought to have returned directly, quod nihil habet: But the Sheriff may return, quod bona elongata sunt, and thereupon Execution shall be of their proper goods.

And yet if the Sheriff shall return, Quod bona Elongata sunt, an Action of the Case will lie against the Sheriff for such his return, if it be not true.

Sur Fieri facias vers Executors, le vicount return, nulla bona, &c. le Plaintiff poet aver special brief de Fieri facias, sc. que le vicount levier le det des biens le mort, & si sibi constare poterit que les Executors ont degast les biens, donque de bonis propriis, Co. 5. 32. 11 H. 4. fol. 70. Fitz. Exec. 57. 2 H. 4. fol. 4.

Also the omission of words usual maketh the return not to be good, as where the return was Residuum hujus brevis patet in quadam schedula, &c. for Residuum Executionis istius brevis patet, this is vitious, 19 H. 6. Fitz. Ret. 14.

So in a Scire facias the Sheriff returned Scire feci A quod sit coram vobis, &c. and did not say further, ad faciend' quod breve requirit, and it was adjudged no good return, 16 E. 3. & 26 E. 3. Fitz. Ret. 77. 119.

Issint assize fuit Return sic, Plegij E. V. infranominat' A. B. & C. D. Ou le return serra, E. V. infranominat' Attachiat' est per Plegios A. B. & C. D. Et pur default de ceo parol Attach, le return tenuis void, 5 E. 4. Br. 93. Vide & quare.

Again

Again every return ought to answer the point of the Writ (as it seemeth) and therefore where the Writ (to the Sheriff) was, quod Scire fac<sup>3</sup>, hæred<sup>3</sup> terrarum & tenementorum quæ fuere M. &c. and the Sheriff returned, quod Scire fecit W. H. militi, fil. & hæred. præd<sup>3</sup> M. &c. And it was assigned for Error, for that he did not return him heir of some Lands or Tenements, according as the Writ required; for his Warrant was not to summon the heir of M. but the heir of the Lands and Tenements of the said M. See Co. 3. 15.

Where the Writ directed to the Sheriff, hath in it this clause, vel causum nobis significes, it seemeth the Sheriff may return the special matter or cause, &c.

Certain.

Also the return of the Sheriff ought to be certain to every intent, as a Declaration ought to be; and the Sheriff is bound to take knowledge of the Law in making his return: And therefore in a Scire facias Laurentio Both Magistro Aulae de B. in Cantabr<sup>3</sup> & scholaribus ejusdem, &c. the Sheriff returned quod Scire fecit Magistro, &c. And did not say, Scire feci Laurentio Both Magistro, neither spake of the Schollers, and therefore it was holden to be a void return, Fitz. Ret. 26. 32. And yet Vide Co. 8. 127, 128. that the Sheriff's return being only to ascertain the Court of the truth of the matter, it requirerh not such precise certaintp as is required in pleading. 3 H. 7. 11.  
a. 12. a. Br.  
Ret. 82. see  
Co. 8. 127.  
128. Fitz.  
Retor. 32.  
34 H. 6. 49  
Br. Ret. 14.

Yet in a Scire facias against Elen. Prioress. de W. the Sheriff returned Scire feci Prioress. de W. without saying Elen<sup>3</sup> Prioress. and it was holden good. 29 E. 3. 33.

If the Sheriff's return be incertain in the year, day or place, it is not good, Dyer 69. pl. 29. & Fitz. Attach. 1.

And yet these, or the like words, in the return, sc. prout (or secundum quod or ad faciendum quod) istud breve exigit & requirit, do oftentimes help the incertaintp. Vide Fitz. Return. 2. 44. & 83.

The Sheriff upon a Capias returneth that he arrested the Defendant at D. and would have carried him to the Gaol, and that W. N. did rescue him, and it was holden no good return; for that he did not shew at what place W. N. made the rescue; and it shall not be intended to be where the arrest was, Dyer 69. Fitz. Ret. 32. 10 Ed. 4. 15  
Br. Ret. 97.

Also Termino Pasch. 6 Eliz. Benlows Serjeant shewed to the Court, that upon a Capias ad satisfac<sup>3</sup> the Sheriff had returned a Rescous, and had not therein shewed the place where the Rescous was made; and thereupon the Opinion of the Court was, That the return was not good; for that it was not certain from whence the Venue should come, if the matter were traversed.

Upon an Extendi fac. the Sheriff's return was holden void by reason of the uncertaintp, &c. See hic c. 58.

In

43 E. 3. 7.  
Br. 103. In a Præmunire the Statute is that the Defendants shall be warned by the space of two months before the day of the return, and for that the Sheriff returned the warning generally, and did not say what day, nor that it was two months before the return; therefore the return was holden to be insufficient; yet the contrary was holden, 39 Ed. 3. 7. Br. 56. And that it shall be intended that it is well served according to the Law; for other Writs ought to be served by the space of fifteen days before the return, and yet no mention thereof is made in the return: And if the Sheriff do not warn the party, nor serve the Writ as he ought, the party if he be dammified, may have a Writ of Deceit against the Sheriff.

8 H. 7. 6.  
Br. 116. And so in a Pluries for a Corodie, the Sheriff returneth that the Bishop of H. is Founder, and returneth not the name of that Bishop which founded it, and therefore it was holden to be incertain, quia oportet nominare primum Episcopum fundatorem, sc. Herbertum, &c.

Upon a Scire fac. against one upon a Statute, the Sheriff returneth mortuus est, whereupon a Writ went out to warn one J. and his Heir, and R. and W. the terre tenants; And the Sheriff thereupon returned Scire feci hared. & terræ tenent. without naming the Heir, or terre tenants, by their proper names, and for this the Sheriff was amerced, and another Writ awarded, Fitz. Rotor. 69.

9 E. 4. 19.  
Br. 54. If a Writ be returned thus, responsio Vicecomitis C. and sheweth not the Sheriff's name, it is no good return by the Opinion of Jenny, 3 E. 4. Vide hic cap. 41.

Ibid. If the Sheriff returneth Mandavi Ballivo libertat. R. and sheweth not whose liberty it is, or who is Lord of the Franchise, this is no good return by Pigot, but Danby held the contrary, 9 Edw. 4. 19. See 1 Hen. 6. fol. 6. Br. 64. Fitz. Rotor. 2. & 4.

The Sheriff returned Mandavi Ballivo libertatis Ducis Lancast. &c. and for that the Duke had divers Liberties within the same County, therefore the return was holden not to be good. See 1 H. 6. 6. Fitz. Rotor. 2.

If the Sheriff returneth Mandavi Ballivo liberat<sup>r</sup> de D. and saith not Ballivo J. N. libertatis suæ de S. this was good by the Opinions of three Justices, but Hales Justice held the contrary, 1 H. 6. fol. 6.

And according to this Opinion of Hales, it was adjudged Termino Mich. Anno 18 Jac. Regis, that the Sheriff in his return is to set down the name of the Bayliff of the Liberty. See hic postea cap.

1 H. 6. 6.  
Br. 64. Fitz.  
Ret. 2. In a Scire fac. the Sheriff returneth Scire feci, E. K. modo & forma prout istud breve in se exigit & requirit, and saith not infranominat. E. K. and yet this was holden (by the Court) to be good: for note that these words, prout breve exigit, &c. doth amount to infranominatus, or infra scriptus; see the Books 2 H. 4. 13. & 3 H. 4. 9. Br. 28. Fitz. 44. the like return upon a Scire feci, against two or three several Tenants; the Sheriff returned Scire feci, &c. modo & forma prout breve exigit, &c. and it was holden to be good, without saying or returning separatim Scire feci, &c.

If the Sheriff return upon a Capias against J. & N. quod cepit corpus J. & N. and saith not infranominat. J. & N. this is misprision and must be amended, and yet by the Reporter it is well enough without amendment, 12 H. 7. 19. Br. Amendment 64.

In an Writhe the Sheriff returned the Writ thus, J. P. & A. P. attachiati sunt; viz. J. P. per unum bovem pretij, 10 s. & A. P. per unum equum pretij 40 s. and said not infranominati, this was holden to be Erronious; for it might be intended that they were two Strangers, 11 H. 7. 28.

The Sheriff Attacheth one by his Goods; he ought to return the certaintie of the Goods in specie, &c. hic c. 52.

Also the Sheriff shall return no Juroz without some true and certain addition, by which he may be known, Hic c. 85.

But the Sheriff may return Mainpernozs without any additions, 10 E. 4. 16. Br. Exig. 49.

So the Sheriff may return a Felcons against a man without any addition, ibid.

An Utlarp was returned in this manner, Ad Com. tentum apud J. in Com. Sommerset J. M. exactus fuit & non comparuit, &c. and it was holden (by three Justices) a good return, although it were not Ad Com. Somersset, tentum apud J. in Com. Somersset; but Jay Justice held the contrary; for that it could not be intended of what County the County which was holden was; but alij contra 11 H. 7. 10. Br. 127. Ideo quare.

Note, That in the former Case, this word Somersset, was not entered in the Margent, or upon the head of the return, which is and hath ben the ancient usage, and semeth also to be very material: See 11 Hen. 7. 10. a. b.

Also see Co. 10. 141. a return of an Exigent holden void for the incertaintie, & hic c. 59.

An Utlarp returned in London, in these words, Ad Husting. tentum in Guild-hall Civitatis Londini, tali die A. B. exactus fuit & non comparuit: This is no good return, for that there are two Hustings in London; one is de communibus placitis, the other is de placitis terræ; and therefore in such case the return must be apud Hustingum de communibus placitis, &c. Or otherwise it is not good, for that the same may have two intendments.

The City of Norwich is within the County of Norfolk; also it is a County in it self, which may hold Plea; and therefore if a return be made in these words, Ad Com. tentum apud Norwicum in Com. Norf. This is not good, for that it may have two intendments: sc. that the County which was held there was for the City, or the County of Norfolk: But if the return be in these words, Ad comitatum Norf. tentum apud Norwicum in Comitatu Norf. This is good; for now it cannot be intended, but only that this County was held for the County of Norfolk.

2. In intendments.

In

Co. 4. 94.  
Dyer 105. In Writ of Error to reverse an Attainr in the County of Lancaster, the Error was for that the Sheriff returned, quod ad Com. Lancastrie rent. ibid. &c. where it should have been ad Com. Lancastrie, rent. apud Lancaster, or at some other certain place whereto that word ibidem might have had relation, and the Attainr was therefore reversed.

21 H. 7. One was outlawed, and the Exigent was returned thus, Ad Com. tentum apud castrum de Oxon' primo exactus fuit, &c. and for that it was not set down in what County, it was holden to be Erronious.

Ibidem. One was returned outlawed, and for that it did not appear that it was per Judicium coronatorum, it was reversed, and that without any Writ of Error, 21 H. 7. fol.

27 H. 8. 29.  
Br. 3. An Exigent went out to the Sheriffs of London against J. S. of D. in the County of Essex Gent. and Proclamation to the Sheriffs of Essex, who returned the Writ in this manner; Virtute istius brevis proclamari feci ad Com. talem, tentum tali die, and not set down in what year, &c. Et quod se redderet Vic' Kancie, where it should have been Vic' London: And for these causes it was holden no good return, and the Sheriff should have been amerced, but that the Writ was returned in another term.

40 E. 3.  
Br. 17. In a Writ to enquire of waste, the Sheriff returned quod cepit Inquisitionem die Sabbati prox' apud K. and for that he shewed not what Saturday, and also shewed not quod ivit ad locum vastatum prout breve exigit, it was holden no good return, and the Sheriff was amerced.

34 Aff. 6.  
Br. 76. In an Attaint the Writ was, & diligenter inquir. qui fuer. Juratores primæ Inquisitionis, and whether M. B. Miles were one of the Petty Jurp. the Sheriff returned their names, and that M. B. was dead, and did not say M. B. Miles, so as it might be intended to be another person, and yet it was holden a good return.

2 E. 4. 1. In a Scire facias to have an Execution of an annuity against a Parson, the Sheriff returned, quod non habet bona, and notwithstanding that it was not further, Nec habuit die receptionis brevis, yet it seemeth to be intendable, and so to be good. So in debt or Trespass, &c. hic Return in det. Bon per intendment.

In a Scire fac' the Sheriff returns, quod Scire fecit J. N. prout breve in se exigit & requirit, it is good although he says not inframinato for it shall be intended, 1 H. 6. 6 Br. expos. 34.

So if the Sheriff returns, Mandavi ballivo de D. and doth not further say, ubi terra jacer, it is good, for it shall be so intended, ibid.

So in a Scire fac' sued against two several Tenants, the Sheriff returns Scire feci a les 2. quod sit, &c. modo & forma secundum quod istud breve exigit & requirit, &c. And altho' the return was not Scire feci a les 2. separatim; yet for that the return was, modo & forma, &c. the return was holden good, 2 H. 4. 13. Fitz. Ret. 44.

So if the Sheriff in the former case had returned Scire feci a les, 2. quod sint, &c. ad faciend' quod istud breve exigit & requirit, it is good, ibid.

In Wasse, or Redisseisin, in divers Towns, the Sheriff ought to go to all the Towns (though he may take his inquisition at one) and he returned quod accessit ad D. & ibid. cepit inquisitionem, and holden good, for that by intendment he likewise might go to all the other Towns, &c. 40 Ass. 23. Br. Rediff. 5.

See more the Sheriff's return holden to be good by intendment; 28 Ass. pl. 46. & 34 Ass. pl. 6.

Also sometimes the return of the Sheriff is only to certify and ascertain the Court the truth of the matter, and in such case there needs no such precise certainty as in Pleadings: See the Case of the City of London, Co. 8.

If the return be repugnant, it is not good, Dyer 278. vide hic Ret. de Seifina in Dower.

*Double.* A double return made by the Sheriff is not good, as if the Sheriff returneth (the Pluries against an Abbot to admit the Kings Warlet to a Corrodie) that the King is not founder, and that King Edw. the 4 did release to the Abbot all Corrodies, this is double, and so void. 3 H. 7. 46. Br. Ret. 116.

Also the Sheriff is not to return any thing which should come in the challenge of the parties: as in a Writ of Right the Sheriff returneth two knights, and two Serjeants, to choose the Grand Assize; this is a good return; but if the Sheriff returneth this as a cause thereof, i.e. for that there were no more knights within the County, which were not of kindred to the parties, this makes the return to be insufficient, Causa qua supra. And per Surplusage in a return, doth not make void the return (as it sameth) for as to the Surplusage the Court taketh no regard, 32 H. 6. Fitz. Return. 23.

In all (or most) cases, the Sheriff may make these returns following:

Tarde, &c. hic 64. b.  
Non est inventus.  
Nihil.  
Mandavi ballivo Libertatis hic.  
Clericus est beneficiatus.  
Servic.

*True.* The Sheriff by his Office and Oath, is to make a true and just return of all Writs: See his Oath, & Dyer 60.

And by the Statutes, if the Sheriff shall make any false return, he shall be punished, i.e. he shall be amerced, and besides shall pay damages to the party grieved: Stat. 13 E. 1. 39. & 28 E. 1. 16. 12 E. 1. c. 39. 28 E. 1. c. 16.

Where the Father was condemned, and upon the Exigent upon a Capias ad satisfaciend. the Sheriff returned quod reddidit se, and it was the Son which came (and so averred and found to be the Son) the Sheriff was amerced. 7 H. 4. 11.

Upon an Exigent the Sheriff returneth quarto exactus, and the Coroners upon a Cerciorari to them directed, certified that the Defendant 37 H. 6. 27. Br. 59.

dant was Outlawed, the Sheriff for such false Return was amerced at forty pounds.

5 Eliz. c. 23. If any Sheriff or other having authority to return Writs, do make an untrue Return upon any Capias, in a Writ of Excommunicato capiendo to him directed, that the party named in the Writ hath not yielded his body upon any Proclamation made, where indeed he hath yielded himself according to the effect thereof, he shall forfeit to the party grieved forty pounds to be recovered by Action, &c.

Fitz. 93. b. If the Sheriff in a Writ of Account or Debt, shall return upon one, quod non est inventus, nec habet terras, &c. per quod distringi potest &c. whereupon a Capias shall be awarded against him, and he shall be taken thereupon, whereas he had Lands sufficient, or Goods and Chattels, then the party may have his Action of the Case against the Sheriff (directed to the Coroners) for such false Return.

Fitz. 97. c. In a Praecipe quod reddat, if the Sheriff return the Tenant summoned, when he was not summoned, whereby the Tenant loseth by default upon the Grand Cape returned: Here the Tenant shall have a Writ of disceit against him which recovereth, and also against the Sheriff for his false Return.

48 Ed. 3. 15. And yet in some cases the Sheriff shall not be amerced or punished for making a false Return, as in an attainr, if the Sheriff shall Return any to be of a petty Jury, which were not, Juries shall go out against those whose names were omitted, but the Sheriff shall not be therefore amerced: Et hic.

Note, That the Sheriff cannot return any thing which is contrary to the confession of the party: As for a Trespass laid in D. and the Defendant confesseth that there is such a Town, here the Sheriff cannot return Nul tiel ville in Com. &c. 3 H. 7. Br. Return. 87. & 37 H. 6. Fitz. Return. 27.

3 H. 7. 12. Also note, That the Sheriff cannot return any thing which is contrary to the Verdict of the Jury, as in an Action of Debt against Executors, who pleaded that they have fully administered, and it was found against them, sc. that they had assets remaining, whereupon a Fieri fac. was awarded to the Sheriff to levy the sum of the Goods of the Testator, and the Sheriff returned Mandavi ballivo libertatis de K. qui mihi dedit responsum, quod Executores praed. testatoris non habent aliqua bona testatoris, &c. the which Return was contrary to the Verdict, &c. and therefore not good, Fitz. Ret. 35.

Br. 87. 5. And yet for that he is a stranger thereto; and it may be that the Defendant hath not Assets within his County, and yet hath Assets in another County, and then the Jury upon the former issue ought to find Assets, and yet the Sheriff cannot Return so, except they be within his County, whereupon the case was adjourned.

I have seen a Report of a case in Communi Banco, 21 Eliz. where in an Action of Debt against Executors, who pleaded riens inter mains, the Defendant did aver that they had assets, which also was found by Verdict, and upon a Fieri fac. to have execution, the Sheriff returned riens inter mains; and the former books of 3 H. 7. & 5 H. 7. were vouched

vouched to prove that the Return was not good, being against the Verdict of the Jury (and therefore it was moved that the Sheriff should be amerced.) But Roads Justice doubted thereof, and vouched the Book, 7 E. 6. to the contrary, sc. that the Sheriff should not be concluded by the Verdict.

*Contra al bre.* In a Replevin it is no good Return that there are no such Goods or Cattel: 5 H. 7. 27.

In a Writ to deliver Goods upon a Detinue, it is no good Return, that there are no such Goods, *ibid.*

In an Habere facias seisinam, it is no good Return that there is no such Land, *ibid.*

Also in Writs of Seisin, it is no good Return to alledge Non tenancy in him whom the Writ of Record supposeth to be tenant, Manxel's Case, Plo. 14. a. & Fitz. Return. 91.

The Sheriff cannot return Nihil, where Issues were returned by himself before.

*Contra al former return.* The Sheriff cannot Return Nihil upon him whom he hath once returned, summoned, or distrained upon another Writ; tamen quære, 22 Aff. 82. Br. 51. 10. for such return may be good upon some special matter returned, Vide 9 H. 6. Fitz. Ret. 10. 13. & Br. Ret. 7.

By the Opinions of Fortescue and Markham, if the Defendant be returned sufficient, and after Nichil, it is good, so that the Plaintiff may have a Capias, and an Exigent against him; but otherwise against a Juroz, Br. 49. 19 H. 6. 31

And yet in some cases, the new Sheriff is not concluded by the return of the old Sheriff, but may Return the contrary, &c. See hic cap. 44.

*Falso Latin.* But false Latin is not greatly material in the return of a Writ, &c. as if the Sheriff shall return in a pannel, Johannis D. where it should be Johannes D. yet it is a good Return, 2 H. 4. 7. Fitz. Ret. 43.

The Sheriff returned Scire feci J. A. Cl'io, whereas it should be 7 H. 6. 1. Clerico, and it was amended: 7 H. 6. 1. Fitz. R. 6.

### C A P. XXXVII.

*Cepi corpus.*

If the Sheriff return upon any person Cepi corpus, or Reddidit se, the Sheriff shall be chargeable to have the bodies of the said persons at the days of the return of the Writs, Bills or Warrants, &c. 23 H. 6. c. 10. And so was the ancient Common Law, Fitz. Ret. 71.

The Sheriff returneth Cepi corpus, but hath not the body at the day, he shall be amerced: 44 E. 3. 2. pea, although a protection were cast for the Defendant: 11 H. 4. 57. Liber. Intrac. tit. Capias 19. Fitz. Return. 71. & Co. 8. 40. 44 E. 3. f. 2. 11 H. 4. f. 57.

So if the Sheriff returneth quod mandavi ballivo, &c. qui respondit quod cepit corpus; and if the prisoner appeareth not at the day the Sheriff shall be amerced, by some opinions; but by other opinions, the Bayliff only shall be amerced: *Sæ hic postea.*

The Sheriff returneth Reddidit se upon the Exigent, but hath not the body, he shall be amerced.

Upon a Capias ad satisfac. if the Sheriff returneth a Capi corpus, and hath not the Body, he shall not only be amerced, but also the Plaintiff may have his Action against the Sheriff for an Escape, for that his return hath concluded him, Br. Ret. 107.

Upon a Capias for Felony, the Sheriff returneth Capi corpus, but hath not the Body at the day, whereupon the Sheriff was amerced for the Escape at fifty pound.

Upon Process against the Husband and Wife, the Sheriff returneth, quod cepit illos, and at the day the Husband appeared, but not the Wife, and the Sheriff was amerced therefore.

But if the Sheriff had returned that the Husband Non est inventus, and that he had taken the Wife, and she only had appeared, that had excused him.

Upon a Fieri fac. the Sheriff returneth Fieri feci, &c. Quas paratas habeo ad diem infra content. and at the day he hath not the money in Court, and after a new Sheriff was made, and it was moved to have a *Distring.* nuper vicecom. ad habendum denarios, &c. But Litt. said, That the Justices were advised upon this return, being of record, to award a Scire fac. against the old Sheriff to have execution; and if he could not discharge himself, then the party should have execution against the old Sheriff by Fieri fac. or Elegit. 9 E. 4. Br. Ret. 55.

Upon a Fieri fac. if the Sheriff levieth the money, but yet returneth not the Writ, nor payeth the money to the Plaintiff, it seemeth the Plaintiff may have his Action of Account against the Sheriff: As also the Defendant may have his Action of Trespass against the Sheriff for levying the money, and not returning the Writ, Vide 11 H. 4. & 27 H. 7. 22. b. Br. Tresp. 211.

Now where the Sheriff shall be amerced for his return.

Mr. Bracton, lib. 5. tit. de exceptionibus c. 32. saith thus, Aliquando vicecomes negligens est in executione preceptorum Domini Regis, per fraudem. Aliquando illa exigi non potest propter impotentiam unde nisi rationabilem pretendit excusationem, in misericordia Domini Regis remanebit. Contingit vicecomiti quodcumque quod cum breve Domini Regis suscepit de Attachiando aliquem, post summonitionem factam, quod Attachamentum non facit, nec breve quod ei inde venit remittit, Quo casu, &c. *un alias issera commandment al vic. de Attacher le Def. quod si ad talem diem,* Et quod ipse vic. tunc sit ibi auditorus Judicium suum de hoc quod præd. Def. non Attachavit, nec breve quod ei inde venit, misit, sicut ei præceptum fuit, &c. Ad quem diem si vicecomes nihil inde fecerit magis quam prius fecit, nec se excusaverit, ad voluntatem Domini Regis amerciabitur de contemptu, & tertio per breve, Domini Regis, &c. præcipietur quod ei Attachiet, &c.

Mittit quandoque vicecomes breve quod inde suscepit, & fraudulenter rescribit & mandat, quod breve tam Tarde recepit quod præceptum Domini Regis exequi non potuit. Quo casu si in contrarium testatum fuerit, &c. Alias issera, ut super, &c. *ibid.*

*Et issint est de auters faux Retornes del vic. & un alias issera ut super, & amerciabitur ut super, ibid.*

Issint si vicecomes per imperitiam suam erraverit in modo & ordine Attachi-

Attachiametorum & Districtonum; ut si præceptum sit ei, quod ponat per vadios & salvos Plegios, & ille mandat, quod, Distrixit per terras & caralla, vel è contrario.

Iffint si Præceptum sit ei, quod Habeat Corpus, & ipse mandavit quod Attachiavit per Plegios, vel commisit per ballivam, vel hujusmodi, ibid.

*Vic' amerce.*

Note also, That the Sheriff shall be amerced, pea shall pield damages to the party grieved for his return in divers other cases, see hic cap. 20.

As if his return be incertain or otherwise insufficient, Br. Ret. 3. Vide hic c. & 7 Ed. 1. c. 1.

So if his return be false; Stat. 28 Ed. 1. c. 16. & hic antea.

So if he make no return, hic postea.

So in a Replevin if he return that the Cattel be in a Fort or Castle.

So if he return he could not execute the Writ for resistance, &c.

The Sheriff shall be amerced for returning small or no issues, upon the Defendant, Stat. 12 E. 1. c. 39. & Bro. Ret. 120. & 86.

The Sheriff shall be amerced for not returning issues upon Jurors, according to the Statutes.

The Sheriff shall be amerced for not returning pledges, Br. Ret. 25. 61. 86.

See Mr. Bracton, lib. 5. tit. de exceptionibus, c. 32. That the Sheriff shall be amerced for making a false or insufficient return, or other negligence therein.

But note, that the use is to amerce the Sheriff the same term only wherein he maketh his return; and if he be not amerced that Term, then he is to go quit, quod nota per Fitz. 27 H. 8. fol. 29. a. but this amercement is no recompence to the party grieved: And therefore the ancient Statutes of 13 Ed. 1. c. 39. 28 Ed. 1. c. 10. & 2 Ed. 3. c. 5. (hic antea c. 20.) were meet to be put in use and execution.

*Pur default de auter.*

Upon a Writ to enquire of damages, the Sheriff returneth that the Enguest or Jurp gave or found no damages; the Sheriff shall not be amerced for this default of the Jurp: For the Sheriff shall not be amerced, but where he returneth the Writ falsly or insufficiently of himself, whereas here he returned it as the Jurp had presented it, Fitz. Ret. 66. 44 E. 3. 3. Br. 20.

*Del Southwic'.*

And yet the Sheriff shall be amerced for the default of his Under-Sheriff, as in the book of Assizes, where the Under-Sheriff returned a pannel by a precept directed to one who was not Bayliff of a franchise, by reason whereof the pannel was quashed; there the Sheriff himself was amerced, and not the Under-Sheriff; and an action of the case doth lie against the Sheriff himself, for the return is always in the name of the Sheriff himself: See hic postea tit. Sheriffs Officers. 38 Aff. 13. Br. 77.

*Del Bayliffi.*

So the Sheriff shall be amerced for the default of his Bayliff. If any Bayliff or other Officer shall impanel or return any person, upon any inquiry in the Sheriff's Turn, which is not of good name, and have 20 s. per annum of Fræhold, or 26 s. 8 d. per annum of Copphold, &c. such Officers shall lose for every person otherwise returned or impanelled forty shillings, and the Sheriff other forty shillings, &c. 1 R. 3. c. 4. hic postea Sheriff's Torn.

*Del Bayliff de Liberty.*

Also sometimes the Sheriff hath ben amerced for the default of the Bayliff of the Liberty; and therefore where two were indited of felony, and pleaded Not-guilty, the Sheriff returned certain persons, and by examination of the Justices it appeared that they had not sufficient Fræhold, according to the Statute, and the Sheriff was 38 Aff. 19. Br. Chal. 129.

pounds, the Sheriff said that the Bayliff of the Franchise of Bury made the Return; whereunto Green Justice answered, That the King had no Minister but the Sheriff.

But note, that in this Case the King was party, and where the King is a party, no Franchise shall be allowed, but the Sheriff himself ought to have served and executed.

Br. 14. 89. The Sheriff returned upon a Capias, Mandavi Ballivo, &c. qui respondit quod cepit Corpus; and the prisoner appeared not at the day, the Sheriff was amerced; for where the Bayliff made a false Return to the Sheriff, and the Sheriff returned it (as quod cepit Corpus, and had it not at the day) yet the Bayliff shall not be amerced; for that he is not the immediate Officer to the Court, but the Sheriff is the immediate Officer.

Br. Return. 15. 87. 92. 94. 96. 99. And yet there were sundry Authorities to the contrary, sc. that in the former Case the Bayliff of the Franchise was to be amerced and not the Sheriff; and that the default was only in the Bayliff, and not in the Sheriff: For upon such return of the Bayliff (to the Sheriff) quod cepit Corpus, &c. The Bayliff was bound to bring in the Sheriff, and then the Sheriff was to bring in the body as the immediate Officer to the Court, Vide libr<sup>9</sup> Intrac. tit. Capias div. 20. & Fitz. pr. 22.

Br. 89. But where the Bayliff of the Liberty made an insufficient return to the Sheriff, and the Sheriff returned it, he was amerced, and not the Bayliff; for that the Sheriff was not Minister to the Court, 20 E. 3. Fitz. Return. 113.

And therefore when the Bayliff made an insufficient return, the Sheriff should have done well, and might have returned, quod nullum dedit responsum; for an insufficient answer or return, is as none, Fitz. Amerc. 1.

As in a Præcipe against two, the Bayliff returneth one of them summoned, and the other not; this is no answer; and if the Sheriff return this, he shall be amerced, Br. 89.

2 H. 6. 9. Br. 47. So in an Mize the Sheriff returned, Mandavi Ballivo, &c. qui mihi respondit, &c. and returned but nine Jurores, and the Sheriff was amerced; for that he ought to have returned, quod mandavi, &c. qui nullum mihi dedit responsum.

3 H. 7. 12. Br. 87. So the Sheriff returned, Mandavi Ballivo, &c. qui mihi respondit, that the Executors had no goods of the Testator, which return of the Bayliff was contrary to the Verdict of the Jury (who had found assets, &c.) and therefore the Sheriff was amerced; for that the return of the Bayliff appeared insufficient in Law, whereof the Sheriff ought to have taken notice, and in such case to have returned, quod ballivus non dedit responsum.

And yet in a Writ to enquire of Waste, the Sheriff returned, Mandavi Ballivo Libertatis, qui mihi nullum dedit responsum, and the Sheriff was therefore amerced; for that the Sheriff (by this Writ) is made a Judge of the Cause, and might have entered the Franchise, &c. 11 H. 4. Fitz. Retor. 53.

But if the Bayliff maketh a double return, and the Sheriff returneth this, it seemeth he shall not be amerced, by the opinion of Vavisor, 5 H. 7. 27. Br. 89.

27 H. 8. 24. 1 E. 3. 65. But now by the Statute made 27 H. 8. cap. 24. amerciament for insufficient returns of Writs, made by Bayliffs of Liberties, shall be set upon the heads of such Bayliffs, and not upon the Sheriff; nor upon the Lord of the Franchise, D. & St. 134.

## C A P. XXXVIII.

Where the Sheriff maketh no Return.

**N**Ota le commencement del Suit, est tous foits per brief Original hors del Chancery sous le Grand Seal D' Anglister, Teste Rege; Et retournable in le Court qui isender plea (sont Bank le Roy, Common Bank ou Chancery mesme:) Mes tanque Return le suit n'est dist pendant; Ne les Courts ne teignant plea sinon sur Original return devant eux; Et par ceo sur Original retorne Tarde (sc. adeo Tarde venit quod executiones inde facere non potui) Alias, & Pluries, isser. hors del Court, lou l'original est retorne, Teste le Chief Justice, car per le retorne le Court est possess. Mes si nul Retorne soit fait, le Alias, & Pluries isser. hors del Chancery, Finch. 52, 53.

Et le tierce brief nient retorne per vicount, est un Contempt sur que Attachment gist vers le vic<sup>3</sup> 2 E. 4. 1.

By the Statute of Westminster 2. cap. 39. Damages are given against the Sheriff, if he makes no return at all, or shall make a false return, &c. Vide hic c. 20.

*Fait nul return.* If the Sheriff will not return his Writ (in case of Redisseisin, or Velary) the party may have a Certiorari, directed to the Sheriff, to command and cause him to return the Writ, and the Sheriff shall be amerced for such his fault and concealment, Dyer 223.

If a Capias, or other mean Process be executed, and not returned, the Arrest is tortious and a wrong; for the Arrest is made to that end, that the Defendant should appear to answer to the Plaintiff in his action: But if an arrest be made by the Bailiff, and the Sheriff will not return the Writ, this laches of the Master shall not prejudice the servant; for the Bailiff cannot compel the Sheriff to return the Writ: But contrariwise of the Master himself, sc. if the Sheriff taketh one upon a Capias, and returneth not the Writ, an Action of False imprisonment lieth against him, by him that was arrested, and the Plaintiff also shall have his remedy against the Sheriff, Litt. 18 E. 4. 9. Br. Tresp. 339. Br. False imprisonment 5. 7. & 12. ac. And yet in the book of 13 H. 7. f. 1, 2. this difference is taken, sc. that if the Bailiff of a Liberty by virtue of a Warrant from the Sheriff Arrests a man, and after the Sheriff returneth Non est inventus, the Bailiff shall be discharged in an Action of false imprisonment, for that he is not the Sheriff's Bailiff, but the King's or some other Lords; but otherwise it is of the Sheriff's Bailiff, if he Arrests a man by virtue of a Warrant from the Sheriff, and after the Sheriff returneth Non est inventus, this Bailiff is chargeable in an Action of false imprisonment; for it shall be accounted his folly to do a thing by his Master's warrant or commandment, and then his Master will not return the Writ according to that which he hath done, See 21 H. 7. f. 22. accord. that the Sheriff's Bailiff or servant is not bound to do any thing but that which his Master will justify.

It hath been holden, that (upon a Fieri fac.) the payment of the money by the Sheriff to the party Plaintiff, was to no purpose; for that

Co. 5. 901

Cro. 86. 89  
Fitz. 62. 11  
fac. 30.3 H. 7. 36.  
21 H. 7. 21.Vide Cro.  
86, 87, 89.

the Defendant is a Debtor of Record, and therefore ought to be discharged upon Record: And for that purpose the Fieri fac. is, *Ita quod habeas denarios hic*, to the intent that the money should be paid to the Plaintiff in Court upon Record, and the Defendant discharged upon Record, and so the Sheriff must have made his Return, Vide 11 H. 4. Fitz. Bar. 183. & 19 E. 2. Fitz. Scire fac. 120. & hic cap. 30.

Co. 4. 67.  
& 5. 90. But in all Writs of Execution (except an Elegit) as upon a Capias ad satisfaciendum, Haber. facias seisinam, vel possessionem. Fieri facias, Liberate, &c. if the execution be duly done, although the Writ be never returned or filed, it is no great matter, if the Plaintiff have his demand; for then he hath no cause to proceed any further therein: Yet in case of an Elegit, because the extent is to be made by an Enquest, and not by the Sheriff alone, that ought to be returned, or else it is nothing worth.

Co. 4. 67. a Also where no enquest is to be taken, but only Land to be delivered, or seisin had, or goods to be sold, &c. which are but matters in fact, these are good although that the Writ be not returned.

If upon a Capias to Arrest one, the Sheriff shall execute it, and shall not return it, he is punishable; for that the Capias is conditional, by these words, *Ita quod habeas corpus ejus hic tali die*, &c. But in an Habere facias seisinam, the Writ is to put the party in seisin without any conditional words; and therefore though he return not the Writ, the Sheriff is excusable, 16 H. 7. 14.

Upon a second Deliverance if the Sheriff shall deliver the Cattel to the Plaintiff, and shall not return the Writ, he is punishable. See hic cap. 73.

43 H. 7. 1. Upon a Fieri facias, &c. if the Sheriff levieth the money or debt, but neither returneth the Writ, nor payeth the money to the Plaintiff, he is chargeable to the Plaintiff in an action of account, &c. and to the Defendant in an Action of Trespass. But if the Sheriff had payed the money to the Plaintiff, the execution had been good without return of the Writ, Co. 5. 90. As also the Sheriff had been without danger to be sued either by the Plaintiff or Defendant.

And to note a difference between a Capias in Process, and a Capias ad satisfaciendum: sc. if the Capias in Process be not returned, the arrest is tortious; but if the Capias ad satisfac. be not returned, yet it is good, if the Execution be duly done, and the Plaintiff satisfied.

Co. 5. 90. Note also, if the Sheriff upon a Fieri fac. shall execute the Writ, and levy the debt, but shall neither return the Writ, nor pay the money to the Plaintiff, yet the first the levying of the Debt was lawful, and the Defendant could not resist the Sheriff therein: Secondly, the Plaintiff may have a new Execution against the Defendant, and the Defendant is left to his action against the Sheriff: Thirdly, The sale of the goods (by the Sheriff) by force of the Fieri fac. is good; and such as shall so buy the goods may lawfully enjoy them. And where the words of the Writ of Fieri fac. be, *Ita quod habeas denarios*, &c. they are but words of commandment to the Sheriff to make return, the which if he doth not, he shall be amerced therefore; but yet the execution shall stand in its force, Fitz. Scire fac. 120.

*Amerced.*

In an action of Disceit against the Sheriff, for that the party was outlawed at the Suit of the Plaintiff, and that the Sheriff (then Defendant) did not return the Writ, to the damage of the Plaintiff, &c. the Sheriff pleaded that he had sent the Writ by A. B. his servant, towards the Court, and that one of them which were named

*Le brief estoine.* in the Exigent did rob and take away the same Writ from his said Servant by the High-way, and it was holden to be no Plea, but the Action against the Sheriff to be maintainable, 41 Aff. pl. 12. Br. Action sur le case 121.

But note, That in this former Case the Writ which was taken away from the Sheriff's Servant, was through the default of the Sheriff; for it was taken away by one of the persons which were outlawed, whom the Sheriff ought to have taken and kept in prison, &c. Br. Bar. 68.

The Head and Chief Officer or Officers of every of the King's Courts of Revenue, being of Record, shall have Power and Authority to set and assess reasonable Fines and Amerciaments upon any Sheriff, for not returning, or mis-returning of any Writ to them directed and delivered out of any of the same Courts, touching or concerning the levying or answering of any Issues, Rents, or Revenues, or of any Debt due to the King, &c. 7 E. 6. c. 1.

If any Writ of Proclamation (upon an Exigent) directed to any of the Sheriffs of any of the twelve Shires in Wales, or Counties Palatine, &c. be delivered to any of the said Sheriffs, or to his Deputy, and the same Sheriff do not make true Return thereof into such Court out of the which the said Writ of Proclamation shall be awarded, he shall forfeit for every default of non-return to the King and Informer five pound, &c. 1 Ed. 6. cap. 10. & 5 Ed. 6. cap. 26.

If any such Writ or Writs of Proclamation directed to the Bishop, or Chancellor of the Bishoprick of Durham, or County Palatine, be delivered unto any of the said Bishops for the time being, (or during the vacation of the said Bishoprick) to the Chancellor of the said County Palatine, for the time being, or to his or their Deputy or Deputies in manner and form aforesaid, and the same Bishop for the time being, or (during the vacation of the said Bishoprick) the said Chancellor of the said County Palatine for the time being, do not make true return of every such Writ and Writs of Proclamation to them directed into such Court and Courts, out of which the said Writ or Writs of Proclamation shall be awarded; for every such default of non-return, every such Bishop for the time being, and (during the vacation of the said &c.) the said Chancellor for the time being, so failing to make due Return, shall forfeit 5 l. to the King and Informer, 31 El. cap. 9.

And yet note, That there be some Writs which need not to be Returned; As upon a Recovery in a Quare Impedit, a Writ is awarded to the Bishop, &c. to remove the Incumbent, &c. this Writ is not returnable, ut dicitur, Dyer 260.

So upon a Recovery in a Quare Impedit, a Writ is awarded to the Bishop, &c. to admit the Clerk of the Plaintiff, Dyer 350.

Also the Writ de Returno habendo is not Returnable, Fitz. Replev. 3.

Also the Writ de vi Laica removenda, may be made Returnable, or not Returnable, Fitz. 54.

Also the Writ of Crespals, which is Discountiel, is not Returnable, Fitz. 85. g. And so of other Discountiel Writs. See hic cap. 113.

The Writ de Habere facias seisinam, is not Returnable, Terms del Ley. Tit. Habere fac. seisin. Tamen vide hic cap. 63. divers Return de ceo.

And so in other Cases, except the Writ or Precept directed to the Sheriff requireth it, the Sheriff needeth not to make Return, Finch. 229.

Note, That if the Writ be Returnable, the day of the Return is appointed in the Writ, Finch. 237.

Also

Also note, That it is no good Return for the Sheriff, that the party will not pay him his fee (or costs or charges) for executing the Process, and therefore he did not execute the Writ, or did not serve the Writ, 34 H. 6. Br. Ret. 10.

The Bishop is not bound to award his Inquiry of a Jure patronatus (where the Church is litigious) but where the party or his Clerk shall require it, and that at the costs of the party, or of his Clerk; for that he is a Judge in this Case, and therefore he is not to do it at his own costs and charges; but contrariwise where he is an Officer: for there when the Court writeth to him to certify Bastardy or Matrimony, or the like, he is to do that at his own costs and charges.

7 H. 6. 32.

8 H. 6. 3.

Br. 46.

Note, That in some Cases, altho' the Sheriff serveth not, or executeth not the Process, but excuseth it by his return, it is good. As

1 In a Replevin the Sheriff returneth that the Defendant claimeth property, Br. 46. Fitz. 77. c.

So in a Writ de Nativo habendo, if the Villain alledge to the Sheriff that he is free, and the Sheriff returneth this, Fitz. 77.

Ibid.

And so of other impediments which shall interrupt the Sheriff to make his return, or take the party.

2 The Sheriffs of London return their custom, See Br. Custom 23. & Retor. 40. & 46. & Fitz. Ret. 7. & hic c. 73.

3 The Sheriff of Chester, or of any other County Palatine, return that they have a County Palatine within themselves, &c. Br. 46.

Ibid.

4 Also where the Sheriff returneth Mandavi ballivo libertatis qui nullum dedit responsum, &c. here although the Sheriff served not, or executed not the Writ himself, but excuseth it by such his return, shewing thereby why he hath not served it, yet it is good.

So where the Sheriff returneth Tarde.

So where the Sheriff returneth that the Plaintiff Non invenit plegios de prosequendo.

## C A P. XXXIX.

## Return de Mandavi ballivo.

**A**S the Sheriff is the immediate Officer of the King, and his Courts, to execute all Writs and Process, so to him all their Writs shall be directed, although it be of a matter or thing done within a Liberty or Franchise, in which case the Sheriff must write or send his Precept to the Bayliff of the Liberty, who must serve and execute the same (as servant to the Sheriff) and must make answer (or return) thereof to the Sheriff; but the Sheriff himself must make the Return of the Writ into the Court, 2 H. 6. fol. 7. Finch. 52.

And yet in a Writ of Redisseisin, and in a Writ to enquire of waste, and such other Writs wherein the Sheriff is made Judge of the Cause, there if the Sheriff shall write to the Bayliff of the Liberty to execute the same, the Sheriff shall be amerced; for the Sheriff in such cases must enter the Liberty, and execute such Writs himself, and must not return Mandavi ballivo libertatis: And so in other cases, as where the King is a party, &c. See hicc. 40. & 122.

For the forms of the Sheriffs Precepts or Warrants, to be made to the Bayliff of the Liberty, they are to be like to those which are made by

by the Sheriff to his other Waplifts (which *sc* hic c.) saying that where those are directed Ballivo hundred. de R. &c. these are directed Ballivo Libertatis de R. &c.

Now for the manner of these Returns de Mandavi ballivo libertatis, &c.

The Sheriff returneth Mandavi ballivo libertatis, &c. he shall do well to shew cause (in such return) *sc*. *eo quod præd. terræ & tenementa sunt infra libertatem de, &c.* And yet without cause shewed, such a return was allowed to be good, 1 H. 6. Fitz. Ret. 2.

The Sheriff returneth Mandavi *J. B.* ballivo libertatis de *E.* cui executio istius brevis pertinet, &c. whereas he should have returned, quod ballivus habet retorna omnium brevium, & execution' eorundem, and it was moved that the Sheriff should have been amerced,

Mandavi *B.* ballivo honoris de *T.* parcel Ducatus Lancaster. qui habet plenum retornum omnium brevium & executiones eorundem infra libertatem præd' & cui executio brevis illius totaliter restabat faciend. *eo quod nulla executio inde in balliva mea extra libertatem præd. per me fieri potuit.* Libr. Intr. 262.

The Sheriff returneth Mandavi *A. D.* ballivo libertatis Ducatus Lanc', &c. qui habet retorna omnium brevium infra libertatem præd', &c. Exception was taken against the Return, for that it was not ballivo libertatis Ducis Lanc' (for that the Dutchy hath no capacity to have a liberty) but yet it was holden a good return: And so Mandavi ballivo libertatis Sancti Edmundi de Burie, and Mandavi ballivo libertatis Ducis Lanc' and the like, are good returns: Fitz. Ret. 24.

If the Sheriff shall return Mandavi ballivo libertatis, and shall not therein set down and return the proper name of the Waplift of the Liberty, it is not good; for that such Waplift is to be amerced for his default, which cannot be except his name be known to the Court, and his name cannot otherwise be known to the Court than by the Sheriffs return, Mich. 18 Jac. Regis: And yet *sc* 3 H. 6. Fitz. Ret. 3. if the Waplift in his Return hath certified or subscribed his name, the Court hath thereby sufficient knowledge, &c.

Where the Sheriff returneth Mandavi ballivo libertatis de *S.* and doth not shew to whom he is Waplift, or whose the liberty is, *sc*. ballivo. *J. D.* libertatis suæ de *S.* yet it was holden to be a good return by the Justices in 1 H. 6. but there Hales Justice held the contrary, *sc*. that the Sheriff in his return ought to shew who is Lord of the Franchise, See 9 E. 4. 19. Br. 54. & Fitz. Ret. 2. 4. 31.

The Sheriff returneth Mandavi tali, &c. qui habet retorna omnium brevium & executionem eorundem per chartam Regis, And for that the Waplift was not returned Waplift of some Franchise, or Lord, the Sheriff was amerced; quare and *sc* the Statute of West. 2. c. 39.

The Sheriff returned Mandavi ballivo libertatis, &c. and for that he did not return further that he had nothing within his Waplitwick, he was therefore amerced, 47 E. 3. fol. 2.

If the Sheriff shall return Mandavi ballivo libertatis de *D.* who did nothing therein, whereas there is no such Liberty within the County, or nameth a Liberty which hath not Return of Writs, the Sheriff shall be punished as a disinheritor of the King and his Crown: And therefore it is ordained by the Statute of 13 E. 1. c. 39. (as a thing needful) for the Sheriff to have out of the Treasury of the Exchequer a note of all the Liberties within his County, that have Return of Writs. Vide 13 E. 1. c. 39. Fitz. Ret. 40.

M<sup>r</sup>. Bracton, lib. 5. §. 32. saith thus, Exculatur vicecomes multoties propter

propter libertatem & impotentiam, quod libertates sine warranto ingredi non possit, nisi per defectum eorum qui libertates habent & retorna brevium per vicecom. & unde si præceptum sit vicecom. quod attachiet talem qui manens sit infra huiusmodi libertates, cum vicecom. ingredi non possit; faciat vicecom. retorna brevium ballivis præd' libertatis, & præcipiat ballivis quod tale præceptum Dom' Regis exequantur, quo casu aut ipsi ballivi exequantur præceptum Dom' Regis, aut nihil inde faciant; Si autem illud plene fuerint executi, per hoc liberabitur vicecom. Si autem nihil inde fecerint, sufficiat ad excusationem vicecomitis, quod mandet Justic' quod præceptum sit ballivis; Quo casu cum ballivi inde nihil fecerint, propter defectum eorum præcipietur vicecom. quod non omitat propter libertatem talem, quin attachiet, &c. talem quod sit, &c. Et sic poterit vicecomes libertat' ingredi cum warrantum habuerit, quod alias ei non liceret.

*Et in tuel cases brief issera al vic' de enter le liberty, de executer le Process, &c. & de Summoner le Bayliffs del liberty quod sint coram Justic' responsur' quare præceptum Dom' Regis non fuit execut. Et si forte cum vicecomes ingredi voluerit, hoc non ei permittatur propter potentiam ballivorum libertat', præcip' (ut prius) vicecomes quod non omitat propter libertatem talem, quin attachiet, &c. talem in forma præd'. Et si aliquem invenerit resistentem, assumptis secum (si opus fuerit) militibus & liberis hominibus de com' ad sufficientiam, capiat corpora hominum resistentium, & illos in prisoa salvo custodiat, donec Dominus Rex inde præceperit voluntatem suam; & nihilominus Dominus libertatis attachietur quod sit ad prædictum diem ad defendendum se, si possit, de prædicta transgressione, ad quam quidem si advocaverit, vel defendere non possit, Capiatur illa libertas in manum Domini Regis pro voluntate Domini Regis detinenda, quia libertatem meretur amittere qui permissa sibi abutitur potestate, Bracton ibid.*

This then being the ancient Common Law of the Land, was afterwards (most of it) confirmed, by the Statute of Westm. 2. (which Statute was made after the time that Mr. Bracton wrote) the effect of which Statute of Westm. 2. to this purpose, is as followeth:

13 Ed. 1.  
39.

If the Sheriff doth return, that he had directed his Precept to the Bayliffs of some liberty (which indeed have return of Writs) which did nothing therein, then the Plaintiff shall have another Writ whereby the Sheriff shall be commanded that he shall not omit for any liberty aforesaid, but shall execute the King's Commandment of Writ himself, and that he shall warn the Bayliffs to whom he returned the Writ, that they shall appear at a day contained in the Writ, to answer why they did not execute the King's Precept; And if they do appear at the day, and do acquit themselves, that the Writ was not returned nor no Precept from the Sheriff made unto them, the Sheriff shall be forthwith condemned to the Lord of the same liberty, and likewise to the party grieved by delay, to restore him damages: But if the Bayliff's do not appear, and do not acquit themselves in form aforesaid in every judicial Writ, so long as that suit dependeth, the Sheriff shall be commanded that he spare for no liberty, &c. Westm. 12. 13 Ed. 1. 39.

*Non omittat*

*Mandavi ballivis libertatis.*

12 E. 2. 5.

There shall be an Indenture made betwixt the Bayliff of the Franchise (which hath full return of Writs) by his proper name, and the Sheriff by his proper name, of every return which the Bayliff of any such Franchise shall make to the Sheriff: And if the Sheriff do change the return so delivered unto him by Indenture, and thereof be attainted at the suit of the Lord of the same Franchise from whence he hath received

*Indenture betwixt the Sheriff and Bayliff.*

received the said return (if the Lord have received any damage, or if his Franchise be impaired) and at the suit of the party which hath received loss by this means, he shall be punished by the King for his false return, and also shall yield to the Lord and the party double damages, Stat. Ebor. 12 E. 2. c. 5.

*Uncore si le vic. retourne auters persons (in un Pannel) que le Bayliff del Franchise ad retourne a luy, le retorn del vic. semble d'estre bon; mes le Bayliff del Franchise poet aver son action sur le case envers le vic. in tiel case, 30 Ass. 5. Br. Ret. 73.*

*In Assize, le vic. retorn part de ceux queux le Bayliff del Franchise retorn a luy & part de autres (contra al Indentures perenter le Bayliff & luy) & per Finch le vic. poet retorn q'l il voet; Abr. d'Ass. 51. vide ibid. 93. q. in Assize port de ters in Franchise, si le vic. fist tout le Pannel, ce. bon, uncore le Seignier del Franchise poet aver action vers le vic. &c.*

The Sheriff returneth Mandavi ballivo libertatis, &c. who serveth and executeth the Process in part, this is not good; for that the Sheriff himself must execute or serve and return all, or the Waplift all, See 2 H. 4. 1. & 8 H. 4. 16. Fitz. Ret. 41.

For the Sheriff cannot serve a Writ in part, and write to the Waplift of a Liberty to execute the other part, because that the Writ is entire, and cannot be severed nor served by two Ministers or Officers: And therefore, if the Sheriff (upon the Venire fac. or upon the Distring. Jurat. or Hab corpora Jurator.) shall return the Writ served by himself, as to part of the Jurozs, and as to the rest, he shall return, Mandavi ballivo libertatis, &c. the Sheriff shall be amerced for such his return, Abr. d'Ass. 145. 19 H. 6. & 31 H. 6. Fitz. Retor. 14. & 20.

*Mes si le vic' sur un Capias in det vers 3 retorn que il ad prise 2 & quant al autre il ad maunde al Bayliff del Liberty, &c. qui nihil respondit, &c. ceo est bon retorn, per les Justices al Serjeants Inn, Ter. Trin 7 E. 6. vide Fitz. Ret. 22. accord.*

If an Assize be brought of Tenements in two Franchises, the Sheriff shall write to each Waplift, and both of them ought to serve and execute it, Abr. d'Ass. 93.

If an Assize be brought of Land within a Franchise, and the Franchise extends into another Hundred, the Sheriff shall write as well to the Waplift of the Hundred, as to the Waplift of the Franchise, &c. 23 Ass. Abr. d'Ass. 93.

A Venire fac. was returned served by the Sheriff, and upon the Habeas Corpora the same Sheriff returned Mandavi ballivo libertatis, and this return was holden to be good by all the Justices: for if the Sheriff had done wrong at the first, yet he may amend it when he will; And also it may be that there was no Franchise at the time of the Venire fac. returned, and that there was at the time of the Habeas Corp. Also it may be that the Jurozs were then out of the Franchise, and after at the time of the Habeas Corp. were within the Franchise: Also it may be that the Jurozs were sufficient within the Franchise, and not without, Vide 26 H. 6. Fitz. Ret. 19. ibid. 22. contr. But the Sheriff in his return must certify and shew some cause, &c. See Abr. d'Ass. 144, 145. hic postea & 8 R. 2. Fitz. Chall. 176.

And in a Præcipe quod reddat of lands within a Franchise, the Sheriff was amerced for that he returned Mandavi ballivo libertatis, &c. who took the pledges and made the summons, &c. for that the Sheriff himself ought to have taken the pledges de prosequend. altho' he cannot serve the summons; for first he ought to take pledges; and then shall 14 H. 6. 3. Br. Ret. 61. Abr. d'Ass. 93.

shall make his Mandate to the Bayliff, &c. and so the Sheriff may return the Pledges de prosequendo, and the Bayliff of the Franchise shall serve and execute all the rest of the Writ. *See* 21 Hen. 7. fol. 14. hic cap. 52.

So where the issue is of Land part Guildable, and part in a Franchise, the Jurp shall be returned part by the Sheriff and part by the Bayliff of the Franchise, and so they may join in the return; But the Distress shall be by the Sheriff only, if the Bayliff of the Franchise shall be slack, *Vide* Abr. d'Ass. 93. 145.

Br. 30.

*Tamen quare, de ceo quant parcel de le Pannel est fait per le Bayliff, & part per le vic. ils sont deux Pannels: Auxi nul brief poet estre retourn per deux Ministers (ut super) & pur ceo semble que le vicount ferra tout, ou le Bayliff tout, Abr. d'Ass. 51. & 145. Fitz. Ret. 14. & 22.*

*Affize fuit port de tenements in 2 villes, & lun del dits villes fuit deins un Franchise, & l'autre in Guildable, & fuit doubt cement ceo brief ferra icy execute; car icy deux mischies poent ensuer, lc. 1. Ceux de Franchise ne poent aver le view, per commandement de Bayliff, de terres hors del Franchise. 2. poet ensuer que le Bayliff del Franchise ne unques server brief. Car home poet tous foits mitter en le brief part del terre Guildable, &c. Vide 18 E. 3. fol. Abr. d'Ass. 94.*

*Nota que tiel part del County que est contributory inter eux mesmes a payer tribute ou common charges, est appel le Guildable; & si ascun special liberty la soit, ceo est appel le Franchise, Co. 8. 125.*

*Et ceo parol Gildes, est un brotherhood, society, ou Company incorporate, Co. ibid. & Minsh.*

The Sheriff maketh his Precept or Warrant to one who is no Bayliff of the Franchise, who returned the pannel, by reason whereof it was quashed, to the damage of the Plaintiff, &c. who brought his Action of the Case against the Sheriff, and recovered his Damages, notwithstanding that this was done by the advice of the friends of the Plaintiff, and so pleaded; and besides the Sheriff shall be amerced therefore.

*Warrant al un que n'est Bayliff del Franchise.*

The Sheriff (upon a Replevin) returned Mandavi ballivo libertatis, &c. Qui mihi nullum dedit responsum, or returns that the Bayliff will not make deliverance, &c. these are no goods returns, for the Sheriff (ex officio, as it seemeth in such cases) ought himself to have entered the Franchise, and to have made deliverance of the Cattel, &c. *Fiz. 68. f. Register 81. b.*

*Nullum dedit responsum.*

Upon a Distringas for Debt, the Sheriff returned Mandavi ballivo, &c. qui nullum dedit responsum. And for that the Sheriff did not return, Quod null. habet exitus in ball. sua, therefore he was amerced, 47 E. 3. fo. 3. Br. 23.

Note, That wheresoever the return of the Writ pertaineth to the Bayliff of a Liberty, yet if the Sheriff doth it himself, it is well enough, 3 H. 7. 2. b. But the Lord of the Liberty may have his Action sur le case against the Sheriff, &c. *Finch. 52.*

*Si Affise soit port de terres deins Franchise, le vic. poet fair tout le Pannel fil voet, & il est assés bon; & n'est auter doubt sinon per l'action le Seigneur del Franchise vers le vic. (Et per ceo l'author dit) Entreetes le vic. si le Bayliff ne soit vostre amy, Abr. d'Ass. 93.*

Also note, Where the Sheriff serveth the Process once of a thing local, as in a Praecipe of Land, &c. he cannot after return Mandavi ballivo, &c. yet the Sheriff ought to take the pledges de prosequendo, and then may make his Mandavit, &c. *ut super.*

Yea wheresoever the Sheriff hath served the first Writ, he cannot (by some opinions) write after to the Bayliff of the Franchise, except

38 Ass. p. 13  
Br. Action  
sur le case  
120.

3 H. 7. Br. 89

in his return he sheweth some special cause. Vide Abr. d'Ass. 144, 145.

But in the former Book of 5 H. 7. Keeble taketh this diversity, *sc.* between a thing permanent, and a thing removable; for of a thing permanent, as in a Precept of Land if the Sheriff hath served the first Process, he shall do ill, it afterwards he shall make his Precept to the Bailiff of the Liberty; for by his serving of the first Process, he hath affirmed the Land to be within his Jurisdiction: But of a thing removable, as a Trespass, or Debt, he may serve the Process; and when that cometh to the Capias, he may make his Precept to the Bailiff of the Liberty, to take the body, for that the body is removable, which diversity was affirmed by the whole Court.

## CHAP. XL.

Where the Sheriff is to enter the Franchise.

**A**Ll Original Writs are to be directed to the Sheriff of the County (as is shewed here before, cap. 20. & 39.) yea although it be of a matter within a Franchise, in which case the Sheriff shall direct his Precept to the Bailiff of the Franchise, who is to serve and execute the same; But the Sheriff must make the Return of the Writ into the Court, 2 H. 6. fol. 7.

*Rey Party.*

And yet note that wheresoever the King is a party, as in every felony, or suspicion of felony, or otherwise in any action, the Sheriff, ex Officio, is to enter the Franchise, and to execute and serve the Process himself, and is not to write to the Bailiff of the Franchise. Br. Franch. 18. 31. 38. Ass. 19. Br. Return. 78. Co. 5. 92. And yet if this clause, *Licet fuerimus pars* be in the Charter, then it seemeth otherwise.

Plo. 243.  
Br. Franch. 31.

*On vicount est Judge.*

In a Writ to enquire of Waste, the Sheriff returned *Mandavi ballivo libertatis, &c. qui nullum dedit respons.* and the Sheriff was amerced; for that in this Writ he ought himself to have entered the Franchise, and to have executed the Writ ex Officio, and without a *Non omittas, &c.* for that he is both a Judge and an Officer by the Stat. which is, *quod accedat ad locum vastatum, &c. & ibi facere inquisitionem, &c.* So in a *Redisseisin*; and in a Writ of Ward, &c. See more hic postea.

Fitz. Retor. 52, 53. & 92.

*Sur default le Bayliff.*

Also in other cases upon the default of the Bailiff of the Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, or else he shall be amerced: As where the Sheriff *Mandavit ballivo libertatis*, and the Bailiff *nullum dedit respons.* See the Statute 13 E. 1. cap. 39. & hic postea tit. Bayliffs of Franchises. So where the Bailiff is a Party.

Fitz. 68. f. Marlebr. c. 21. N. Br. 44.

So where a Distress is taken within a Franchise, and the Bailiff of the Franchise will not deliver them, then the Sheriff upon complaint to him made, may deliver them, Stat. Marlebr. cap. 21. N. Br. 44.

But in the former cases where the Bailiff of the Franchise maketh default, it seemeth latest for the Sheriff to have a Writ with a *Non omittas* therein directed to him, commanding him to enter the Franchise, and to make execution of the Writ, before he may enter the

the Franchise to execute the Process; for the words of the Statute of 13 E. 1. 39. are that the Sheriff shall be commanded, quod non omittat propter aliquam libertatem, &c. See Fitz. 68. f. 69. b. & 74. a. & 266. d. & P. Retor. & Bracton hic c. 39.

And this Statute of Westm. 2. c. 39. (made Anno 13 Ed. 1.) doth give a Non omittas propter aliquam libertatem.

And by the Statute of Marlbr. cap. 21. & Westm. 1. cap. 17. (in fine) upon the default of the Bailiff, the Sheriff ought presently to enter the Franchise and make deliverance of the distress taken, &c. Fitz. 68. f.

*Issint si plee de Withernam soit in le County Court sans brief, & le vic' maunde al Bayliff de Franchise de fair deliverance, & le Bayliff fait riens, adonq; le vic' potest ex Officio (sine breve) enter in le Franchise, & faire deliverance del Castel. Fitz. 68. f. & Regist. 81, 82. & Nat. Br. 43.*

*Si le vic' return quod propter libertatem aliquam non possit hujusmodi averia Replegiare, tunc fiat breve de non omittas propter Libertatem, Regist. 82.*

*Mes vide ibid. que ceonest pas tenuis in lun case ne l'auter sans brief.*

*La est in le Registr. un non Omittas propter Libertatem, quin ingred' & Corpus ejus Capias, & in prisona donec debitum satisfecerit, salvo Custodias, &c. fol. 151. b.*

*Un non omittas propter libertatem quin ingred' Et capias in Withernam, donec, &c. cum pluries, fol. 82.*

*Un non omittas propter libertat' quin omnia bona & catalla, & medietatem terrar' &c. sine dilatione liberari facias per rationabile pretium, Reg. Judic. fol. 5. b.*

Also where the thing is Entire. See hic cap. 122.

Upon an extent of a Statute Merchant, if the Sheriff returneth that he directed his Precept to the Bailiff of some Franchise, he shall be punished, &c. Stat. de Mercatoribus hic cap. 24. whereby it appeareth that the Sheriff is to enter the Franchise, and to execute it himself, upon the Body, Lands or Goods of the Conusor being within the Franchise.

Also where the Bailiff of the Franchise maketh default, &c. and that a Non omittas be thereupon directed to the Sheriff, the Sheriff shall not only thereupon enter himself into the Franchise, and execute the King's Writ, but the Sheriff also shall warn the Bailiff of the Franchise, that he be before the Justices at the day contained in the Writ; and if he come not and excuse himself, then all Writs Judicial issuing during the same Plea, shall be Writs de Non omittas, &c. and the Sheriff shall make execution of them, hanging that Plea. Terms de Ley.

But in other Cases where a man hath liberty to return Writs, and to execute them, &c. if there the Sheriff or his Officer shall enter the Liberty without a Non omittas, and execute any Process there, although the same be good, for that the Sheriff is the immediate Officer, yet the Lord of the Liberty shall have his Action of the Case against him, Fitz. 95. 5. b. See hic postea cap. 112.

Bayliff of  
Fee.

Where there is a Bailiff of Fee, the Sheriff shall not return Mandavi Ballivo (as it seemeth) nor write to the Bailiff of Fee, as to a Bailiff of a Franchise or Liberty; but he shall send his precept to him as to the Bailiff of the Guildable: and the Sheriff shall return his answer, or make his return, as if the Sheriff himself had served the

27 Aff. 65.  
Br. Proc 98.

Process, and shall not in his Return make mention of the Waplift of Fee, as he shall do of the Waplift of a Liberty. And yet note that this Waplift is an Officer of Fee within his Precinct; so that if such a Waplift of Fee will not execute the Process, a Non omittas shall not go out to the Sheriff, &c.

## C H A P. XLI.

*In quel Court.*

**A**Ll Process against any person, directed to the Sheriff, ought to be duly and truly executed, and returned into such Courts out of the which such Process shall be awarded. See hic Cap. 23. the Form.

*Mitter leur  
nosme al return.*

The Sheriff (as also the Waplift of Liberties which receive the King's Writs returnable in his Court) ought to set their Names to their Return (sc. their Surnames and Christian Names, Flo. 63. a.) so that the Court may know of whom they took such Returns, if need be: And this may seem to be by force of the Statute of 12 Ed. cap. 5. Vide 8 H. 6, Fitz. Retor. 8.

*Et uncore dicitur que per le Common Ley le vic' doit mitter son Nosme sur chescun brief que il retorna, & que le dit Stat. 12 E. 2. done penalty vers le vic' sil ne mitter son Nosme al returne: mes ceo Statute ne fait le Ley que le vic' doit return ceo, quia fuit le Ley devant.*

And if any Sheriff or Waplift do leave out his Name in his Return, they shall be grievously amerced, by force of the said Statute of 12 E. 2. Also by the opinion of Jenny, 9 E. 4. fol. 20. a Return without the Sheriff's Name thereto, is void; and an Utlary was reversed for such cause, 26 H. 8. 3. Thel. 385. See Flo. 63. a. that the Writs are directed to the Sheriff of such a County generally, without naming his Name, but he must put his Name to the Return; and this was a common difference holden at Woots in Court and Chancery.

Br. 48, 54,  
81, 129.

*Jeo aye view le Report d'un Case in le Common Bank, An. 29 Eliz. On sur Utlary fuit monstre que le Capias fuit return per les vic' de London in ceux parols, viz. Responsio J.D. & Henrici Billingsly (sur le dorse del Capias) sans dire Vicecom. Et ceo fuit alledge al Court pur Error, pur reverse le Utlary, pur ceo que icy ils ont monstre que ils fuer' vic'. Et un direct President fuit lie, in 16 H. 7. Rotul.*

*Lou un utlage in Action de Det, le vic' interlesse son Nosme ou Addition de vic' sur le Return del Exigit, per que le Utlary fuit reverse; & issint semblable al Justices in le case supra, mes ils voient adviser quia pur le Roine.*

If the Sheriff shall not put his Name to the Return of a Jury, or shall return the Venire fac' without any Indorsement, these are erroneous and not to be mended, Coke 8. 162, 163. & 5. 41, 42.

These

These Returns are to be indorsed on the back of the Writ; And yet if that be made on the inner side of the Writ, it is good enough.

If one returneth a Writ in and by the name of the Sheriff who is no Sheriff, this is erroneous by Galcoyne, 21 Hen. 4. & ne serra amend.

*On serra  
amend.*

But note that the return of the Sheriff being erroneous, or not good, yet it may be amended by the Court in divers Cases; pea although such return were made in another Sheriff's time, 22 H. 6. 45. 33 H. 6. 47. 37 H. 6. 12. & 2 H. 5. 8.

And the Court may cause the old Sheriff (in whose time such return was made) or his Under-Sheriff, or his Clerk or Deputy to amend the same, or any other Clerk of the place, Fitz Amendment 40. 33 H. 6. 47.

As where the Sheriff by negligence shall omit any of the Jurores in the Diltringas, which were in the Venire facias, or shall return T. B. for A. B. or shall return octo tales for decem tales; these shall be amended by the Sheriff upon his Examination in Court.

The Sheriff having returned too small Issues, prayed to amend his return, and it was suffered, Br. Issues 1.

If the Sheriff do return smaller Issues upon any Distress, than the value of the Lands of the Defendant do extend to, between the Telle and the Return of the same, *Le Plaintiff poet cause le vic. de stre Amorce & called into Court de amend ses Issues pur advantage le Roy.*

Also if the Sheriff shall subscribe his name to the Return, omitting this word, *Viccomes*, yet this is amendable, per Curiam. Mich. 13 Jacobi Regis. Vide Stat. 21 Jac. cap. 13.

See plus Dyer 64. & hic cap. 36.

*Mes apres Verdict sur Issue trie, &c. la sont divers faults in return le Vicount queux ne sont amendable. Vide hic postea Return de Venire facias.*

*Uncore per Stat. 18 El. cap. 13. imperfect ou insufficient retournes del vic sont remedy & amendable.*

*Mes si soit in question lou le vic fist tiel return, ou nemy, ceo serra trie per le vic, 9 H. 4. 1 Co. 9. 31.*

*Auxi return fait per le Southvic si soit deny, ceo serra trie per le Southvic. Et le vic ne poet disavowwer ceo, sil confes luy d'estre son Southvic. 10 H. 4. 7. Co. 9. 31.*

## CHAP. XLII.

Where a Man may Averr against the Sheriffs Return, and where not.

**P**UR ceo que le vic est un Officer depute per le Ley, al Roy & ses Courts, home ne serra admit de averrer directement encounter le Return del Vic sinon in aucun special Cases: Et le reason est, pur ceo que lou Justice est d'estre administer & execute, le Roy, & tiels queux sont ses Judges (& desoubt luy sont de administer Justice) doivent necessariment mitter un trust & confidence in aucun person: Et si chescun home puiroit Averr encounter ceo  
que

que le vic' fera, dunque Justice ne unques serra execute, mes serra tous foits, ou sepius, delay. &c. Et uncore a contrario pur ceo que Viscounts & leur Officers ont sepius estre trouvy faulty de leur parts, in fesant faux Retornes al Briefs le Roy, &c. le quel arise in part per corruption, & in part per leur negligence & remissness: Et auxy pur ceo que tiels faux Retornes fuer' sovent foits valde mischevous a les subjets, ideo les Statutes & Leys de ceo Realm, ont in ascun Cases, allow homes de averr encounter le Retorne de vic'.

And first by the Statute of Westm. 2. c. 39. upon a Distringas against the party; the Plaintiff may averr that the Sheriff hath returned too small issues, or that the Sheriff might have returned greater issues upon the defendant: but (by some opinions) upon a Distringas Jurator, if that the Sheriff shall return too small issues, that is out of the Statute, 10 H. 7. f. 11. See 20 H. 6. f. 26. 13 E. 1.

By the Statute made 1 E. 3. c. 5. a man shall have an averrment against the false return of Bailiffs of Franchises which have return of Writs, and shall recover, as well against them as against the Sheriff, as well of small issues returned, as in other cases, so that it be not prejudicial to the Lords, &c. Dr. & St. 134. 5 H. 7. f. 27. 1 E. 3.

Sur Capias le vic' retorn non est inventus, le pl. monstre coment le vic' fist precept al Bayliff del Franchise de prender le Corps, le que luy Arrest & deliver luy al vic' le quel chose il voet Averr. Mes per totam Curiam il n'avera cest Averrment encounter le Retorn del vic' ne in nul case, sinon pur trope petite issues per le Stat. Car si le vic' ad misfait le plt. poet suer luy, &c. 2 H. 4. 14. Fitz. Averrment: 17.

Uncore proces vers vouchee le vic' retorn le vouchee mort, le demandant poet averre que est in vie, pur saver son Inheritance, &c. le garranty. Finch. 52. 14 E. 3.

Auxy home avera averrment encounter retorne del vic' quant le party n'avera l'effect de son suite, come sur Capi Corpus, retorne quod mortuus est in prisona, 3 E. 4. 20. Finch 52.

*Averrment contrary al retorne del vicount.* Sur Venire fac le vic' retorne 24. Furat', & sur le Habeas Corpora il retorne que 12. de eux sont morts, le Plaintiff avera averrment que sont in vie encounter le retorne, 20 E. 4. f. 11.

Sur exigent le vic' retorne quod mortuus est, & le Contrary fuit Averr, &c. que le party fuit in vie, & le vic' fuit Amerce pur tiel faux retorne, Libr. Intrac. f. 336.

1 In deb't vers deux, al Capias le vic' retorne Capi Corpora de ambideux, &c. uncore lun de eux fuit receive adire que l'auter fuit mort, & abate le brief non-obstant le Retorne, 50 E. 3. 7.

Le Plaintiff pria que le defendant in repleg' gager deliverance, & le defendant dit que ils devoint in pound overt, in default del Plaintiff, & pria brief al vicount si constare poterit si le vic' sur ceo brief retorne que sont mort, le Pl. poet averre le contrary, Sicut alias 30 H. 6. 2.

Vicount Retorne Mandavi ballivo libertatis de N. que sic respondit, que auter foits le def. fuit commis al prochain goale per Auditors sur son accompt pur arrerages, & que il esteant Bayliff de ceo gaole luy amesne al prison, & il vient eins sur Capi Corpus, & dit que nul tiel account, & avera cest averrment nient obstant le retorne del vic', 28 E. 4. 5.

*Que le brief fuit deliver.*

Un sue brief de Nativo habendo, le quel fuit deliver al vic' & puis le defendant sua brief de libertate probanda, &c. & le vic' retorne que nul brief de Nativo habendo fuit deliver a luy, & l'auter averre le contrary, & poet, 18 E. 4. 7.

Le vic' retorne sur Exigent, Quarto exactus, &c. Et quod non habuit tempus ad aliquem Com' ultra dictos quatuor Com' ad dictum I. ulterius exigendum: Et Averrment fuit prise, que brief de Allocat' fuit deliver al vic' de

de Record, & deux Counties fuer<sup>t</sup> tenus apres, & issint le Retorne faux, & le vic<sup>t</sup> fuit fine pur ceo, Liber Intra. tit. Exigent. in Retorne div. 4.

Auxy vide pur utlary de felony. M. 1 E. 3. f. 40. Ou le vic<sup>t</sup> retorne le party utlage, & il averr que il se render al Quintum Comitatum. Et le Court escria al Coroners destre apprise de ceo, Dyer 223.

Le vic<sup>t</sup> retorne sur Exigent, quod Exactus, & nient obstant averrment *Amerce al 50.* fuit prise que fuit utlage, & ceo fuit certifie per Coroners, & pur ceo le vic<sup>t</sup> fuit *marks.* amerce al 50 marks, 36 H. 6. 24.

Horne ne serra rescerve de traverse directement le retorne del vic<sup>t</sup> Come ou le vic<sup>t</sup> retorne summons, ou Attachment, Rescous, Non est inventus, & buj<sup>t</sup>smo- di, home ne dira que il ne fuit summon, ou que il ne fuit Attache, ou que il ne fist Rescous, ou que le party fuit deins son Bayliwick; mes poet dire ceo que estoit ove le retorne del vic<sup>t</sup> Come adire, quod non summonitus fuit accordant al Ley, vel Nient attach per 15 jours & tiels que estoit ove le Retorne del vic<sup>t</sup> sans ascun Contradiction, 7 H. 7. 4. Br. Averment, & c. 16.

Et uncore vide Dyer 212 que si le vic<sup>t</sup> retorne Rescous, le party avera Tra- verse a ceo retorne, & hoc per force de ceo parol Convincatur, in le Stat. Westm. 2. c. 40 que dit, & si forte vicecomes cum venerit resistentiam invenerit, Certificet Curiam de nominibus, & c. Et si buj<sup>t</sup>modi resistentes Convincan- tur, punientur, & c. quel parol Convincatur prove que ils poent aver un Tra- verse, & c. Liber Intra. f. 58.

Ou le vic<sup>t</sup> retorne Pledges de prosequendo, ou de Retorno habendo. En Scire fac. apres vers eux, ils ne serront rescerve adire que ils ne fuer. Pledges, car ceo est directement contra al retorne del vic.

Mes un poet aver averment in auter action vers retorne del vicount, come in covenant le vicount retorn luy garnish, uncore le Def. poet averre le con- trary, 11 H. 17.

5 E. 4. 1. Nota un ne poet aver direct averrment encounter retorn de vicount in mes- Ne traverse me le action; mes in auter action poet; come in det vers Bayliff de Franchise directement, si- pur escape dun retorne per le vicount que il ad prise luy per warrant a luy direct non in auter sur Capias ad satisfaciend. poet ore in cest action de det averre que nul tiel action. warrant fuit a luy direct.

Issint in Action sur le case vers le vic<sup>t</sup> home avera direct averrment encoun- ter retorne del vic<sup>t</sup> in auter action, 5 E. 4. 2. Finch. 52.

3 E. 4. 20. Trespas sur Pone, biens fuer<sup>t</sup> retorne attache, & quant le Def. appear, il ad brief al vicount a delivrer a luy ses biens arere, & le vicount retorne que rede- liveravit, icy le Defendant ne poet averre le contr<sup>t</sup>. Mesme le Ley in retorne de seisin in dower, ne poet aver averment al contrary, car le vicount est officer a que credence serra done, & c. mes ou un est sans remedy, & destre disinherite la est autrement; come si le vicount in Præcipe vers un, retorne que il est mort, le demandant poet averre que il est in vie: Issint poet dire nient attach per 15 jours, que nest direct averment, mes sur habere facias seisinam, si le vi- count retorn habere feci seisinam, l'auter ne poet averre le contrary, 3 E. 4. 20. *Ou que person inheritance se perde.*

Horne n'avera averrment directement encounter le retorne del vicount sinon que *Ou que person* son person est d'estre charge, ou que son Inheritance a tous jours est destre perdue, *destre charge.* & ne poet per le Ley aver remedy de s'aver mesme le Inheritance, 3 E. 4. 20.

Et sic nota que home poet traverser directement (& averr encounter le Ret. del vic<sup>t</sup>) in auter action.

Ou in mesme le action, quant son Inheritance, ou l'effect de son suit, serra perde, ou son person d'estre charge.

Ou in favorem vitæ; vide Finch. 52. que in action sur case vers vicount, home avera direct averment encounter Retorn del vic.

Ou le vicount, sur Capias, retorne Non est inventus, home ne poet averr en- counter cest retorne, 2 H. 4. 15.

Ou

Ou sur Corpuscum causa, hors del Common Bank, le vic' retourne que le party est lie al peace (que est pur le Roy) & nient obstant que soit faux, ne poet aver averment in ceo brief, al contrary, 9 H. 6. 44.

Oule Vic' retourne Mandavi ballivo libertatis Archiep' Ebor' que retourne summons, le defendant ne poet averre que le terre est deins Franchise de Richmond.

Brief de Disceit est retorn per Vic', & Def. averre que les summoners ore 34 H. 6. 3. retourne ne fuer' les summoners in le Præcipe, & ne poet aver cest averment encounter le retourne del Vic', 5 E. 4. 7. & 33 H. 6. 11.

Ou vic' retourne un uslage, ne poet averre que ne fuit Exactus forsque trois ou quatuor foits (cu que ne fuit proclame forsque 3 ou 4 foits) mes pur son remedy est darver son Action sur le case vers le Vic', 10 H. 7. 23. Br. Action sur le case 122. See hic tit. Proclam.

In favorem  
vita.

Mes in appeal le party poet aver tiel averment. 10 H. 7. 23. car ceo est in favorem vitæ, Dyer 349.

In brief de Enquir' de wast, ac in brief de Redisseisin le Vic' est Judge, & 30 Aff. p. 33 pur ceo in ceux briefs si le Vic' fait faux retourne, le party ne aver' averment 7 H. 7. 4. encounter son retourne : Ne le party ne poet averre que le vic' ne ala al lieu, &c. 10 H. 7. 28. & Br. Rediff. 4. 6.

Car home ne serra receivre in nul case de alledge ascun chose, contrary de ceo que est fait per un come Judge, 7 H. 7. 4. Br. Offic. 10. 37. & 42.

Iffint si le vic. teigne son Torne apres son mois, & fait Record deins le mois, & home est endite de felony a mesme Torne, semble le party ne poet averr encounter cel.

Auxi si le Vic' ou son Torne prender Inquisition per 8 Jurors, & retourne que il fuit per 7. semble le party n'avera Traverse a ceo.

Vide plus Kitch. Retorna brevium, 43, 46, 47.

### C A P. XLIII.

#### Si Retorne de Vicount server pur Indictment.

Rescous de felon

**N**Ota que coment que est Communement dit, que encounter retourne del Vic' 1 Ed. 3. il ny ad ascun traverse, averment, ou respons; uncore si le Vic' retorna un Rescous fait a luy dun que fuit arrest per luy (ou per ses Officers) pur felony & que est prise hors de son possession; icy non obstant que ceo retourne soit matter de Record, &c. uncore nest sufficient de server come un indictment vers cestuy que fist le Rescous (de mitter luy a respond' sur ceo, si nest trove per Enquest) come appiert, Fitz. Coron. 48. & Stamf. 31. cap. & 95.

Mesme le Ley est, si le Vic' retourne que le prisoner est escape, &c. Vide Fitz. 1 Ed. 3. Coron. 149. & Finch. f. 69. & Stamf. 31. c. Lou Mounſier Stamford done ceo reason, 1c. pur ceo que est contrary a le Stat' fait Anno 25 E. 3. c. 4. que voet que nul soit imprison, ne ouste de son franktenement sans presentment, ou brief Original, &c.

Mes Rescous retourne per le Vic' d'un arrest sur Capias, ou pur auter cause (& nemy pur felony) est in lien dun Inditement, & sur le retourne le auter serra mise a responder, &c. 13 H. 7. f. 21. Br. Rescous 8. & Fitz. Attach. 1. & Retorn. 32.

Et pur ceo in tiel case le Vic' in son retourne doit monstre le certainty del lieu, jour, & An. & del persons queux font le Rescous; mes coment que soit sans Addition semble estre assés bon, hic cap. 36.

## C A P. XLIV.

**T**he return of the old Sheriff shall not conclude the new Sheriff. *Old Sheriff.*  
 And therefore where the Sheriff returned a Jurp de vicinet de D. afterwards the new Sheriff returned upon the Distringas, quod non fuit tale vicinet. de D. in dicto Comitatu, and this return of the new Sheriff was holden to be good, 3 H. 6. 56.

Br. 5.

34 H. 6.

Upon a Fieri fac. the Sheriff returned quod cepit bona ad valenc<sup>9</sup> x l. ad quem non invenit emptores, whereupon there went out to the new Sheriff a Vendic<sup>9</sup> expon. who returned that his Predecessor non cepit bona; Ideo, &c. and it was holden to be good.

And yet if the old Sheriff returneth a Juroz in issues, and the next Sheriff at the Distringas return the same Juroz nihil, the last Sheriff shall be amerced; for he cannot return nihil, contrary to the former return of his Predecessor. but he ought in such case to pursue the last return; and if any Juroz hath sold his Land, or that it be recovered from him, or that the Juroz was seized in the right of his wife, who after died without issue, or if the Juroz had an Estate conditional, and the condition be performed, and thereupon the feoffor hath re-entered, or the like, in these cases the Sheriff ought to return the special matter, and to conclude, Et sic nihil habet, 19 H. 6. 38. Br. 49. Fitz. Ret. 13.

And if the Sheriff shall return a man sufficient, upon the Venire fac. who is not (nor ever was) sufficient, whereby the next Sheriff is charged with the issues, he shall have an Action of Disceit upon the case against his Predecessor, for that he cannot return nihil contrary to the former return of his predecessor, by the opinion of Paston in the former book and case of 19 H. 6. Br. Ret. 49. & Fitz. 13.

19 H. 6.

And yet by the opinions of Fortescue and Markham (in the same case) if the old Sheriff hath returned the Defendant sufficient, and the next Sheriff shall return him nihil, this is good, for that the Plaintiff may have a Capias, and an Exigent against him; but otherwise in case of a Juroz, Br. 49. & Fitz. 13.

Note, That the Sheriff cannot summon or distrain himself, nor his fellow Sheriff within a City. Now see what manner of return they shall make thereof.

In a Præcipe quod reddat against Tho. Wyks one of the Sheriffs of the City of Gloc. and two other, the Sheriffs returned that they could not summon Tho. Wyks, (one of the Sheriffs) which was sued, and they made their return after this manner:

Summon. infranom. Ed. Mi. & Jo. K. { John Den.  
 { R. Fen.

Et quoad summon. infranom. Tho. Wyks Justic. infrasc. certific. quod idem Thomas & ego Tho. Wyks jam unus vic. Civit. Gloc. sumus unus & idem, & non alius neque divers. Ideo ego præfatus Thomas, & H. H. alter vic. Civitatis præd. meipsum secundum exigentiam istius brevis Summon. non possumus.

Respons. prædictor. { Tho. Wyks.  
H. Hyde.

*alias.* Et ceo suit adjudge bon Return Anno 7 Eliz. Benlows Reports.  
Baron. infrascript certifico quod ego H.W. miles modo sum Vic.Com.  
C. Ideo meipsum distringere non possum, prout interius mihi præcipi-  
tur. Br. process 9.  
Vide Plus hic c. 30, & 31.

## C A P. XLV.

## Other Rules concerning the Forms of Returns.

**N**ote, That in every original Writ, where Summons lieth, the Sheriff must first Summon or Warn the Tenant or Defendant to Appear and Answer, &c. and this must be done in the presence of two Summoners, &c. (vide hic c. 31.) which being done, the Sheriff must Return the Writ in this manner, i.e. if the Defendant be sufficient, first he must Return two Common Pledges for the Plaintiff, and then the names of the Summoners, as followeth:  
Responsio A. B. Vicecom. Com. infrascript.

Plegij de prosequendo { Joh. Doo.  
Ric. Roo.

Summonitores infranominati { Will. Brown.  
J. S. (the Defendant) { Rob. Woolward.

And the like return may be made in all Actions Real, if the Tenant or Defendant be sufficient.

But if the Tenant (or Defendant) be insufficient, then the Return may be thus;

Responsio A. B. Vic. Com. infrascript.

Plegij de prosequendo { Joh. Doo.  
Ric. Roo.

Infranominatus J. S. Nihil habet in balliva mea per quod (or unde) Summoneri potest. (If it be in any real Action; or in any Action of Annuity, Covenant, Debt or other Writ, where Summons lieth:) And yet if there be no Land whereupon the Tenant may be summoned, quare if this (Nihil) be a good Return, except that the Sheriff returneth further, Nec est inventus, for that the Defendant may be summoned by his person. If it be in Trespass, or upon a Distringas, upon a Scire fac. or Fieri fac. and that the Defendant be insufficient, see in what manner those returns shall be made, hic postea c. 67.

But if the Sheriff will not make Execution of the Writ, but will delay the same, then they will return it in one of these two sorts.

Responsio A. B. Vic. Com. infrascript.

1. Infrano-

1. Infranoninatus J. S. non invenit mihi Pleg. de prosequendo.

And note, That in every Writ which hath therein this Clause. (Si fecerit te securum de clamore suo prosequendo, &c.) there the Sheriff is to take Sureties (or Pledges) of the Plaintiff, that he shall prosecute his Suit; or otherwise the Sheriff needs not to execute the Writ, nor to make any Precept to the Bayliff to execute the same. Hic c. 52.

2. Istud breve mihi deliberat. fuit (or mihi venit) adeo tarde, quod illud exequi non potui propter brevitatem temporis.

And it seemeth that the Sheriff may return Tarde, in every Writ except in an Attachment, and in a Capias. Hic 36. & 53.

But let the Sheriff beware in making of these two last manner of Returns, that they be true; otherwise it is not only a breach of his Oath, but also he is punishable for such his false Return.

Concerning Pledges. See plus hic c. 114.

Now it followeth to shew and set down the usual forms of Returns, &c.

The form of the Precept of the Judges, directed to the Sheriff to Summon the Assizes and Gaol-delivery; See in the Register of the Judicial Writs, f. 30. & liber Intrac. 443. with the Return thereof.

## C A P. XLVI.

## Retorna Summon. Assis.

1. **V**irtute istius præcepti mihi directi venire feci coram Justiciariis infra scriptis, ad diem & locum infra content. omnia brevia Assisarum, Juratorum & certificationum in Com. C. infra script (coram quibuscunque Justic' tam per diversa brevia Domine Elizabethæ, nuper Regine Angliæ, quam per diversa brevia Domini Regis nunc) una cum pannellis, Attachiamentis, Re-attachiamentis, Summon. Re-summon & omnibus aliis adminicul' Assisarum Juratos & certificationes illas qualitercunque tangent. Venire feci etiam coram præfat' Justiciariis ad Gaolam dicti Domini Regis Castri sui Cantabr' de prisonibus in eadem existentibus deliberand. assignand. ad præfat' diem, omnes prisonar' in \* goala præd' existent', una cum eorum Attachiamentis, Re-attachiamentis, & omnibus aliis adminiculis prisonar' illos qualitercunque tangent', & de vicineto cujuslibet villæ & loci ubi felon' unde iidem prisonarij indictati appell' sive arrestat' existunt fact. fuerunt, tam infra libertates quam extra, xxiv. probos, & legales homines, quibus rei veritas melius sciri poterit & inquiri: Et qui prisonar' illos nulla affinitate attingunt, una cum quatuor hominibus & præposit' villæ & loci eorum ad faciend' ea quæ tunc ibidem eis ex parte Domini Regis nunc injung'. Publicè etiam proclam' feci per totam ballivam meam, quod omnes illi qui sequi voluerint versus prisonar' illos seu eorum aliquem, quod tunc sint ibi versus eos prout justum fuerit prosecutur'. Scire feci etiam omnibus Justic' pacis, Coronator. Seneschall' dominorum & magnar', & ballivis libertat. & Hundred. Com. præd', quod tunc sint ibidem cum rotulis, recordis, indictamentis, & aliis memorandis suis, ad faciendum ea quæ ad officia sua pertinent, prout interius mihi præcipitur.
2. Residuum executionis istius præcepti patet in quibusdam scedulis huic præcepto annexatis.

Fit. 181.  
Crom. 205.

\* Or in  
Gaola com.  
præd.

A. B. Armig. Vic.

C c 2

Et

*Et donque sequitur les Pannels de 24. de chescun Hundred. de mesme le Count, que serra annex al Retorne del dit Præcept. Crompt. 206.*

The Return of the Precept for the Gaol-delivery.

Executio istius Præcepti patet in diversis pannellis eidem præcepto confut. Et ulterius proclamari feci per totam ballivam meam, quod omnes illi qui prosequi voluerint versus aliquos vel aliquem, de ullo inframento pro Domino Rege, aut pro seipsis, quod tunc sint ibidem cum billis suis in forma juris prosecutur. &c. Libr. Intrac. 443. b.

*Auxi un Kallender de nominibus Justic' pacis, Coronatorum, Seneschall. Ballivorum libertatum & Hundredorum, & Prisonar. (queux sont in le Gaol; seu que sont Bail per les Justices apres que fuer. commit. &c.) serra auxi deliver per le vic' al Justices de Gaol-delivery: Le forme de que vies, hic cap. 98.*

And the Warrants which the Sheriff must make by vertue of this Precept (for the summoning of the Assizes) to the Baplifts of Liberties, and Baplifts of Hundreds, must contain in them the whole substance of this Precept: But whether it be in Latin or English, it is not material, so that it be made in due form: And it is needful that the Sheriff keep for himself a particular note of the names of such persons as he nominateth in his Warrant, to be summoned to serve in or upon the grand Jury, and not to leave it to the discretion of Baplifts to put in and out whom they list in that service.

The form of the Warrant made by the Sheriff or Under-sheriff, for the Summoning of the Assizes.

A. B. Miles vic' Comitatus præd' ballivo libertatis de C. vel ballivo Hundred' de A. salutem, Virtute cujusdam præcepti mihi directi, tibi mando, Quod Venire facias coram Jacobo Ley Milit' & Barronetto, & Johanne Dodderidge Milic', &c. Justiciariis Assis. in Comitatu prædicto ad Assisas apud Castrum Cantabridg. in Comitatu prædicto decimo die Augusti. proxim' tenend' (or thus, die Lunæ existent' vicefimo die M. proxim' futuro) omnia brevia, &c. Necnon, &c. seperal' person' subscript' ad faciend' ea quæ tunc & ibidem ex parte Domini Regis eis injungentur; Publice etiam proclamari facias per totam ballivam tuam quod omnes illi qui sequi voluerint versus prisonar' in Gaola (Domini Regis) Comit' præd' quod tunc sint ibi versus eos prout justum fuerit prosecutur. Scire facias etiam omnibus Justic' pacis, Coronat' Seneschallis Dominorum & Magnatum Elcheatoribus, ballivis libertatum, & omnibus capital' Constabular' infra Hundred' tuum, quod tunc sint ibi cum rotulis, recordis, indictamentis, & aliis memorandis suis, ad fac' ea quæ ad seperalia officia sua pertinent. Et quod tu ipse sis adtunc ibidem ad faciendum omnia ea quæ ad officium tuum pertinent: Et habeas ibi nomina præd' Justic' Coronat' Seneschall', Elcheatorum, ballivorum libertat. Necnon capitalium Constabular' una cum hoc præcepto sub periculo incumbente. Dat. sub sigillo officij mei tali die & Anno, &c. Anno Domini 1622.

Cantab.

Set down  
their Titles  
at large.

A. B. Miles Vic.

Alter.

A. B. Miles vic', &c. Ballivo Hundred' de Radseild salutem. Ex parte Domini Regis tibi mando, quod per totam Ballivam tuam publice proclamari facias, deliberac' Gaolæ Domini Regis Castr' Cantabr' etend.

essend. coram Jacobo Ley milit', &c. & sociis suis Justic' Domini Regis ad Assis. &c. apud Castrum Cantabr' die Luna, &c. Et quod omnes illi conquer. volentes versus aliquos prisonar' infra Gaolam præd' ad locum præd' Ac 24 probos & legales homines Hundred' præd' de vicin' in quibus aliqui prisonar' indictat' arrestat' vel appellat' exist. Una cum quatuor hominibus & præpositis cujuslibet villæ, & loci in quibus prisonar' præd' capt' fuer' tunc sint ibidem parat' ad audiend' & faciend', &c. Et habeas ibi nomina Jurator' præd'. Et hoc præceptum, &c. Datum die, &c.

Tibi etiam mando quod capias T.C. de J. (02 has personas subscript.) Ita quod corpus ejus (02 corpora eorum) habeas coram Justic' prædictis ad diem & locum prædict' ad respond' dicto Domino Regi de quibusdam transgr' & contempt' unde indictatus existit, (02 indictati existunt) & hoc, &c.

*Subscripto.* Tibi etiam mando quod venire fac' has personas in schedula huic warrant' annexa, nominatas; Ita quod sint ad diem & locum prædictum ad faciendum ea quæ eis tunc & ibidem injungentur.

Per H. S. Subvic'.

And file a Schedule to the backside of this Warrant; in which Schedule may be set down the names of such as the Bayliffs shall warn for the great Enquest by themselves, and for the Jurp of Life and Death by themselves. These two last Subscriptions or the like, may be written under the former Warrant, and then the Warrant to be signed under the Sheriff, or Under-sheriffs hand and seal of Office: Or else at the end of the Warrant (i.e. under it) the Sheriff or Under-sheriff may set down the names and dwelling-places of such as he will have warned to serve in or upon the Grand Jurp in particular; and he shall do well to keep a note of them, that he may be able to shew to the Court, if need require, who he had determined to have returned for that service, if they had come; and if the fault fall out to be in the Bayliff, then he shall be punished, and the Sheriff excused.

Note, for this great Enquest (or Grand Jurp) it is met that three or four be returned out of every Hundred: And the names of the Hundred to be written in the Margent of the Return, against the names of the Hundredors. And if the Sheriff shall return any such Jurors (either to the Assizes, or to the Sessions of the Peace) without giving them warning by his Bayliff, the Sheriff is fineable.

#### C A P. XLVII.

Lib. 367.

**T**he form of the Precept of the Sheriff to summon the Sessions of the Peace. See in Mr. Lambard 367. Impres. 1599.

And note, that such Precept for the summoning of the Sessions of the Peace, ought to bear Teste under the names of two Justices of the Peace at the least: And not of the Custos Rotulorum alone.

And it must be to summon the County: viz. 24 probos & legales homines of every Hundred of the same County: And by the same Precept

cept he must command all Constables, Bayliffs, Cozoners, and other the King's Officers, to give their attendance upon the said Justices at such a day and place, at the Sessions; and there to present such things which every Officer hath done since the last Sessions by reason of their Offices.

*Retorna Summon's Session' pacis.*

**R**eturn. dicti Brevis aliquando utitur sic, sc. Executio istius brevis patet in quibusdam pannel' huic brevi confut', vel annexis.

*A. B. Armig' Vic'*

*Or thus :*

Virtute istius brevis mihi directi, Venire feci coram Justiciar' infra script' apud castrum Cantabr' infra specificat' die, anno, & loco infra content' omnes Constabularios, & Ballivos Hundred' infra Com' specificat' Nec non de quolibet dictarum Libertatum & Hundred' viginti quatuor Jurator' ad faciend' ea, quæ eis ex parte Domini Regis adduntur & ibidem injunguntur. Ac etiam Scire feci omnibus Constabulariis & Ballivis Hundred' Com' infra script', quod tunc sint ibi habentes omnia nomina Artific' laborat' & servient' husbandria, infra Hundred' præd', vad' contra formam statuti inde excessive capiend' ac insuper sufficient' proclamari feci infra Ballivam meam quod omnes illi qui tam pro Dom' Rege quam pro seipsis versus hujusmodi Artifices, Laborator' & servient' aliquas querelas juxta formam statuti ordinationis prædict' conqueri vel prosequi voluerint, quod tunc sint ibi billas suas prosequi, Justiciamq; ibidem subitur' si sibi viderint expediri, prout inferius mihi præcipitur.

*A. B. Armig' Vic.*

The Warrant must begin in the same form as the other for summoning of the Mises doth, Quod venire facias coram Justic' Domini Regis ad pacem in Com' præd' apud, &c. omnes Constabular', &c. according to the substance of the matter contained in the Writ; and to conclude it as the other is concluded, (Vide pag. præced.)

The form of a Precept for the summoning of a special Sessions, See in Lambard, pag. 599.

The Return of this last Precept, as also the Warrants which the Sheriff must make by vertue of this last Precept, must be like in form to the former, Mutatis mutandis.

*Alter.*

J. G. Miles Vic' Com' ad Balliv' Hundr' de R. & C. salutem. Ex parte Dom' Regis tibi mando, quod non omittas propter aliquam libertat. in Balliva mea quin eam ingred' & Venire fac' coram Justic' Dom' Regis ad pacem, ad prox' general' Session' pacis die Jovis, &c. sc' die, &c. pro Com' præd' tenend' has personas subscript' ad respond' præfato Dom' Regi de quibusdam transgr' & Contempt' unde impetie' & indict' existunt. Et hoc, &c. Datum sub sigillo Officij mei, An' die Junij, &c.

*A. B.*

*C. D. &c.*

Tibi

Tibi etiam mando quod non omit. &c. quin eam ingred. & Capias has personas subscript. Si, &c. Et eas salvo, &c. Ita quod habeam Corpora eorum coram præfat. Justic. ad diem & locum superscript. ad respond. Dom. Regi de quibuldam transgr. & contempt. unde indict. vel impetit. existunt, &c.

D. E.

F. G. &c.

Warn also all Constables in the Hundred, as well Chief Constables as others; And all Coroners and Bayliffs of Liberties to be and personally to appear before the said Justices of Peace at the time and place aforesaid, to do and perform such services as shall then and there be required of them. And warn A. B. of, &c. and C. D. of, &c. to appear upon the great Enquest, and so many Freeholders to appear upon the Enquests of Life and Death, as formerly you have done.

Ch. R. Subvic.

Or thus:

Cantabr.

A. B. Armig. Vic. Com. præd. ballivo Hundred. de Radseild & Chelye salutem; virtute brevis Domini Regis mihi directi, tibi mando quod non omittas propter aliquam libertatem in balliva mea, quin eam ingred. & venire facias coram Justic. Domini Regis ad pacem in Com. præd. conservandam, necnon ad divers. felonias, transgr. & alia malefacta in dicto Comitatu perpetrata, audiendum & terminandum assignat. apud castrum Cantabr. in Com. præd. die Jovis proxime post clausum Paschæ proxim. futur. omnes constabular. &c. ut supra.

The form of the Precept of the Justice of a Forest, for the summoning of a Sessions. See in Crompt. *Authority des Courts*, 149, 150. ab.

The form of the Sheriff's Return to the former Precepts, See hic cap. 82.

The form of the Sheriff's Return for choosing the Verderers of the Forest. See hic cap. 57.

*Nota, q. le Roy ad 2 Justices in son Forests, l'un ultra Trent, & l'auter citra Trent: Et ceux sont Justices par les Forests per tout Anglitter. queux appent al Roy; Mes nemy in Wales. Et seront faits per Commission le Roy souib le grand Seal, Crompt. Author. des Courts, fol. 149.*

*Auxi les Justices de Forest covient doner jour per leur dits Precepts (ou briefs) serra 40 jours inter le Tesse del Precept, & le Retorne de icel al meins, avant que ils tiender leur Sessions: Crompt. fol. 150.*

*Auxi per Stat. 32 H. 8. cap. 35. Justice del Forest, Park, & Chases deins le Realm poent tener Sessions luy mesme ou per leur sufficient Deputy, Ibidem.*

*Concerne le Authority del dits Justices de Forest, Vide Crompt. lib. præd.*

## C A P. XLVIII.

Retorne de Accedeas ad Curiam.

**N**Ote, That if false Judgment be given in any other Court Baron, than in the Sheriffs County Court, then the Writ of false Judgment is called an *Accedas ad Curiam*, Fitz. 18. d.

But this Writ, *Quod Vicecomes accedat in Propria persona sua ad Curiam, &c. ad videndum quod plena justitia exhibeatur, &c.* tous jours est fait per le demandant in le petite brief de Droit, pur ceo que il ne poet my remover le parol pur nul cause. Et gist quant le Defendant se plaint que tort luy est fait en le petite brief de droit, en en proces de plée, que le vic' prise or'e luy 4 Chivalers de Son Countee & voys a la Court la pur vier que droit soit fait pur le demandant, Regist. 9. b.

And by this Writ, the Sheriff is commanded to go in person to the Court, in the Writ mentioned; and that he shall take with him four Knights of the same County; and there must require the sight of the Plea, and in full Court. The Sheriff must make a Record of the said Plea or Suit, in the presence of the said Knights, and of the Suitors of the same Court: And he must annex the Record so made, as a Schedule to the back of the Writ: And then he must return and certifie the same under his own Seal, and the seals of four Suitors of that Court, at the day appointed in the Writ, into the King's Court, Term. del Ley.

*Accedas ad Cur'.*

Virtute istius brevis mihi direct' in forma infrascript' accessi ad curiam Vide Willk: infrascript' & in plena curia illa recordari feci loquelam infrascriptam: latr. 243. Et recordum illud (prout patet in Scheda huic brevi annex') habeo coram Justic' infrascript' ad diem & locum infra content' sub sigillo meo, & sigillis J. B. C. D. E. F. & G. H. quatuor proborum & legalium hominum de balliva mea, ex illis qui record. ill' interfuer': Et partibus infrascript' diem illum præfixi quod tunc sint ibi in loquel' illa prout justum fuerit prosecutur' prout interius mihi præcipitur.

A. B. Ar' Vic.

*The Stile of the Court.*

*Horsheath.*

Ad Cur' Baron. Egidij Alington Militis ibidem tent' vj. die Februarij Anno, &c. (*reciting le Stile del Roy.*)

*Querela.*

J'o. S. queritur versus W.W. de placito captionis & injustæ detentionis averiorum suorum.

And note, That nothing but the Plaint shall be removed, though they be at Issue, Finch. 444.

*The*

*The Bayliff's Return of his Warrant to the Sheriff.*

Wilk.

• *Nota*, It is no Return that there are no Knights within the Hundred.

**V**irtute istius præcepti mihi direct' accept' mecum C.D.E.F.G.H. & J.K. quatuor discret' Milit' \* hundred' de Ch. præd' accessi ad Cur' Eg' Al' Militis, & recordari feci loquelam quæ est in eadem curia inter J.S. quærent' & W.W. Def. Et record' illud parat' habeo sub sigillo meo & sigill' præd' quatuor Milit' ejusdem Curia ex illis qui record' ill' interfuer'. Et partibus prædictis eundem diem præfixi prout mihi præceptum fuit: In cujus rei testimonium tam ego R. F. ballivus hundred' præd' quam præd' C.D. E.F. G.H. & J.K. quatuor legal' Milit' hundred' præd' præsentibus sigilla nostra apposuimus.

Nulla curia infra script' Eg' Al' Militis (unde infra fit mentio) tenta fuit post receptionem hujus brevis, & ante diem Retorn' ejusdem, per quod executio istius brevis ad præsens per me fieri non potest. *Aliter.*

But it cometh that the Sheriff ought here to return further, That he hath required the Lord to hold his Court, &c. And that he will not, Vide Fitz. 18.c.

*Aliter in Curia Baron', vel in Hundred.*

Virtute brevis Dom' Regis huic scedula annex' (assumpt' mecum B. C. D.E.F.G.H.I. quatuor legal' milit' de dicto com' meo) in propria persona mea accessi ad talem hundred' vel ad talem cur' & in plena curia illa, sive in pleno hundred' loquelam coram Justic' infra script' ad diem & locum interius contentum sub sigillo meo, & sigillis quatuor legalium hominum ejusdem curia qui recordo illi interfuerunt habeo parat' huic brevi annex' juxta tenorem ejusdem brevis: Et partibus in eodem brevi nominatis eundem diem præfixi quod tunc sint ibi in loquela illa prout justum fuerit, processur' secundum quod istud breve in se exigit & requirit, &c.

**Note**, That this warning of the parties to be before the Justices at the day prefixed, is sufficient by the reading openly of the Writ in Court, without any other special notice given to the parties.

Virtute brevis Dom' Regis huic scedula annex' (assumptis mecum quatuor discret' & legal' milit' de com' C.) accessi ad hundred. unde in dicto brevi fit mentio, tent' apud B. tali die & Anno, & in plena hundred' ill' loquelam unde in dicto brevi fit mentio, recordar' voluit: Et J.S. ballivus ad tunc & ibidem in plena curia sedens (vis. & audit' brevi præd') libros suos loquelam præd' tangent' immediate clausit, surrexit, & festinans ab hundred' illo, una cum omnibus libris illis, & omnibus sect' ejusdem hundredi ad tunc & ibidem existen' assumpsit secum, & indilate recessit, Et præcept' dicti Dom' Regis in dicto brevi specificat' ad tunc & ibidem fieri executum omnino denegavit & contradixit, & libros prædict' indilate ad tunc & ibid' à visu meo Vi & armis manu fort' abstulit & rescussit, per quod executionem istius brevis ad præsens facere non possum.

*Aliter.*

And note, That in this Writ de Accedas ad Curiam, though the Sheriff must take with him four men of the same County, yet they need not to be Knights; but he must return this Writ under his own Seal, and the Seals of four Suitors of that Court, Plus hic cap. 60.

## C A P. XLIX.

## Admeasurement.

**I**n a Writ of Admeasurement of Pasture (which is vicountiel) if the Writ be removed by a Pone into the Common Bank, and that the parties appear there, and agree that Admeasurement shall be made, then shall there go a Writ to the Sheriff commanding him to make Admeasurement; the which he must do by a Jurp, and with them he must go in his own proper person to the Common of Pasture to be admeasured, as appeareth by the form of the Writ, Fitz. 162. b. But after that he and the Jurp have come and seen the Ground, it seemeth he may make his enquiry elsewhere; And he must return the same into the same Court by Indenture under his own seal, and the seals of the Jurors, Vide hic c. 93, & 113.

*Et nota que in Admeasurement de Pasture (estant remove in Banco per Pone) le Def. arvera jour de appear, & sil n'appear, donque isserra le grand Distress, in quel tiel jour serra done que apres poet estre tenuz deux Counties. Et in chescun de les deux Counties publique proclamation serra fait (per le vic.) que le Def. vener a monstre pur que Admeasurement ne serra fait. Et sil ne veigne al distr. & le proclaim. retorne per le vic. donque Admeasurement serra fait per son default, (mes ceo serra sur auter brief agard al vic. de faire Admeasurement. Vide Stat. Westm. 2. 7. hic. c. 102, & 113. & Fitz. 125. h. (la forme de tiel brief.) N. Bre. 72.*

But if this Writ of Admeasurement of Pasture be sued in the County before the Sheriff, he must first summon the parties, who may plead in the County; and if the Defendant grants that Admeasurement shall be made, or pleads or shews no cause to the contrary, then the Sheriff shall give judgment that Admeasurement shall be made, and presently shall himself make Admeasurement thereof. See Fitz. Admeasur. 2, 3. & Fitz. 125. h.

*Nichil poet estre retorne in brief de Admeasurement de Pasture, ou Dower, Br. Ret. 101. See hic c. 67.*

And note that common Append. shall be admeasured after this manner, first they must sever the Common or Ground; and so many Beasts as the Grazz or Hay will keep in Winter, so many Beasts he may put in the Common or Pasture in Summer. Lectur.

And if the Common or Ground be not sufficient so that all the commoners may have sufficient to their tenements, in such case the tenements shall be admeasured, having regard to that the Common will bear, so that every tenant shall be admeasured according to the bearing of his tenement. *Et nul doit mitter plusieurs beasts en le Common que suffist a manure son terre, &c.*

Retorne de Proclam. de Summons in brief de Admeasurement.

Ad com. meum tent. apud Castrum Cantabr. in Com. Cantabr. infra-script. 21 die, &c. Anno Regni Regis infra-script. 3. Et ad Comir. meum tent. apud Castrum Cant. in Com. C. præd. 22 die, &c. Anno supradicto.  
Proclamari

Proclamari feci omnia & singula in brevi præd' specificat. prout mihi interius præcipitur.

The like return of Proclamation, &c. may be made (as it seemeth) in brevi de Communi Custodia, &c. but that there must be three Proclamations made, at three several County Courts. See hic c. 102.

24 E. 3. 11.  
Br. Ret.  
119.

In a Writ of Admeasurement of dower, the Sheriff returneth that the wife hath more than she ought to have, by forty shillings per annum, and this was holden to be no good return; for he ought to return two parts by it self, and the third part by it self, and their pearly values, and to leave to the Court to adjudge of the value. *Admeasure-  
ment de dower.*

Note, That where the Admeasurement of Pasture, or Dower, is made before the Sheriff (in his County) there the Sheriff himself is Judge, c. Fitz. Adm. 3.

In a Writ of Admeasurement of Dower (which is vicountiel) if it be sued in the County before the Sheriff, all the Lands which she hath in Dower within the same County, shall be Admeasured by the Sheriff, (sc. all the Lands which she hath by the indowment of the Guardian, or by the indowment of the Heir when the Guardian bringeth the Action) 7 R. 2. Stat. Adm. 3. and the overplus shall be restored to the Heir. Fitz. 148. f. See hic c. 113. plus.

But in this Writ of Admeasurement of Dower, if the Writ be removed out of the County Court into the Common Bank, &c. then the Sheriff cannot make Admeasurement, but first the Sheriff must go to the Lands, and then the Sheriff ought to divide, and to praise the Lands by a Jury of seven men, and to set down and to return in certain, how much the two parts are worth per ann. and how much the third part is worth per ann. And when that appeareth to the Justices, it shall be admeasured according to that which the Court shall think good, Vide Br. Adm. 2. tiel matter & Fitz. 148. h.

So that notwithstanding the Defendants default of appearance, the Sheriff is not to make admeasurement, but to leave that to the Court or Justices.

## C A P. L.

Retorn' de Sum' in Assize.

*Assize.*

P Leg. de prosequend. } *Johan. Doo.*  
                                      } *Ric. Roo.*

V. Pl. 415.

Nihil.

Infranomatus, W. L. nihil habet in Balliva mea per quod Attach' potest, nec est inventus in eadem, Fitz. Ret. 57. 7. Ass. 12.

Infranom. W. C. & J. H. nihil habent, nec eorum alter aliquid habet in balliva mea, per quod possunt, seu eorum alter potest attachiari; Nec habent ballivum, neque ballivos, nec eorum alter habet ballivum neque ballivos, nec sunt inventi, nec eorum alter inventus est in eadem balliva mea, 7 Ass. pl. 12. Lib. Intrac. 81. *Aliter.*

Note, the Defendant in an Assize, may be attached by Pledges, if he be found; or if the Sheriff cannot find him, there he may attach him by his goods: And therefore it is not enough for the Sheriff to return, Nihil habet per quod potest Attachari, but there he must further return, Nec est inventus, 3 E. 3. Fitz. Ret. 57. plushic c. 52.

D d 2

And

And if he be attached by Pledges, then the Sheriff may return it after this manner :

Infranominatus *W.L.* Attachiatus est per Pleg. <sup>*A.B.*</sup>  
<sup>*C.D.*</sup>

5 E. 4. Br.  
Ret. 93.

Also the Baplift of the Defendants may be attached by Pledges, and the Sheriff may make his return accordingly, 28 Ass. pl. 40.

*Aliter ubi est Attache per biens.*

*Aliter.*

Infranominat' *W. L.* attach' est per unam vaccam pretij, 30 s.

Or thus, Infranominati *W. L.* & *J. P.* attachiati sunt; viz. *W. L.* per unum bovem pretij 20 s. Et *J. P.* per unum equum pretij 40 s.

By the Statute of Westm. 2. c. 25. in fine, the Sheriff shall not take an Or of the Disseisor, but of the Disseisor only, and if there be many Disseisors named in one Writ, yet shall he be contented with one Or; nor shall receive any Or but of 5 s. 4 d. price of the value, (quere inde) & vide Plow. 73. accordant & lib. Intr. 69. c.

Note, That if the party appear not, his Cowl (or Horse, or other goods attached) are forfeit (to the King) and the Sheriff shall be answerable for the value thereof, Lib. Intr. fol. 69. c. Vide hic Attach'.

Or they may be attached by pledges, Lib. Intr. 78. c. 79. c.

Residuum executionis istius brevis patet in quodam pannello (or in quadam schedula) huic brevi annex.

*A. B. Miles Vic.*

Nomina Recogn. Assise, novæ disseisinæ inter *M. C.* querentem & *T. C.* Tenent. *A.B. C.D. E.F.&c.* (ad numerum xxiv.)

Summon' Jurat. (five Recogn.) prædictorum — <sup>*J.D.*</sup>  
& eorum cujuslibet per se.

28 Ass. 45.  
Br. 68. 70.

Manucaptor. sum. (Recogn.) præd. <sup>*J. H.*</sup> & <sup>*W. P.*</sup>  
& eorum utriusque. <sup>*R. S.*</sup> & <sup>*J. Q.*</sup>

Here the Sheriff must warn or summon the Recognitors, &c. Co. Lit. 158. b.

In Assize, le vic' al primer jour ne retourne forsque Manucaptres summoni-  
torum, & nomina Furatorum, &c. Mes al jour apres il retourne Manucaptres  
Furatorum, Vide Fitz. Ret. 28. Abr. d'Ass. 146. & 37 H. 6.

Also in an Assize the Sheriff may return Mandavi ballivo liber-  
tatis, qui nullum dedit responsum, &c. Lib. Intrac. f. 59. & 76.

*Recogn. quid.*

Nota que les Recognitors del Assise, sont les xii. homes que sont impannel  
sur le Assise, Vide Litt. 234. Co. Lit. 158. b.

Note, That the word Recognitors, is taken for the Jury impan-  
nelled upon an Assize. Min. And the summons of the Recognitors  
or Jurors may be made to their persons in any place within the  
County where the Land in question lieth. Or if the same be made  
at their dwelling Houses, and thereof plain notice given to any of  
their family, it is sufficient.

*Ret. Attach.  
& Return.  
Nihil disse-  
rance.*

Assise vers A. & le vicount retourne, que le Bailly del A. Attach' est, & ne  
dit que A. non est inventus, uncore le retourne agard bon : Mes en le vicount  
retourne Vide Flo.  
73. b. &  
415.  
26 AD. 33.

retorne que le Defend' nihil habet, &c. il dira plus, quod non habet ballivos, nec ballivum, nec est inventus in eadem, &c. 26 Aff. p. 33. Br. Retorna brevium 68. Fitz. Return. 39.

Affise, le Vicount retorne le Bayliff del Defendant Attache per Pledges, & ne retorne que le Def. non est inventus, & pur ceo que le Vic per son return suppose que le Bayliff n'est estre Attache, Ideole retorne agard bon, car in ceo est include que le party n'est trouve : & ideo videtur hic que l'Attach' serra per Pledges, Vid. 28 Aff. p. 40. Br. Return. 70. vide plus apres tit. Attachment.

Affise vers E. Venor, le breve fuit return sic, Pledges E. V. infranominat. A. B. & C. D. ou le retorne serra E. V. infranominat. Attach' est per Pleg. A. B. & C. D. (& non ut supra) 3 ou 4 Precedents fuer' monstre que le primer retorne fuit bien ; mes 40 Precedents fuer' monstre al contrary, & pur l'auter voy, & ideo optima opinio fuit, que le retorne n'est bon, pur ceo que cest parol Attach' fault ; car la est nul parol in le retorne que prove le brief servie per aucun Attachment fait del Defendant, 5 E. 4. Br. Ret. 93.

Pleg' de prosequend', J. D. & R. R.

Infrascript' J. S. & R. B. Attach' sunt, & quilibet eorum Attach' est per Pleg', J. D. R. R.

Residuum executionis istius brevis patet in pannello huic brevi confut'.

Nomina Recogn' in Affise Nov' diss' inter M. C. quer' (seu petent') & T. C. Tenent' seu Defend') in placito, &c.

A. B. C. D. E. F. &c. ad numerum xxiv.

Nomina Recogn' J. P. & T. W.

Summon. (Juratorum predict' & eorum cujuslibet) J. D. & T. B. (vel plures.)

Manucaptor' sum' präd' & eorum cujuslibet, J. S. & J. D.

Executio istius brevis patet in quodam pannello, huic brevi annex.

Nomina Recognitor' in Affiss. Nov' diss. inter A. B. quer' & J. M. Def. J. D. J. S. E. F. &c. ad numerum xxiv.

Quilibet Recognitor' predict' per se separatim Attachiat' est per Pleg' J. D. & R. S.

Exitus eorum cujuslibet, 5 s.

Nomina Recogn' de novo apposit' juxta formam Statuti, A. S. B. C. D. E. &c.

Quilibet Recogn. präd' de nova apposita Attachiat' est separatim per pleg' J. D. R. R.

Vide plus libro Intr. f. 81. b.

#### Retorne in brief de Annuity.

En annuity le vic' retorne le Def. Nihil habet in balliva mea per quod potest attachiari, ou il serroit per quod potest summoniri, &c. Fitz. Amend. 40.

And pet the Sheriff may return, quod Attachiatus fuit, per A. B. & E. Intrac. 42. a.

The Sheriff also may make these returns, Mandavi ballivo qui nullum dedit responsum, Intr' 35. b.

Quod ipse virtute brevis präd' cepit de terr' & Catal' predict' A. in balliva sua ad val. 5 l. &c. Intr. 57. b. plus Intr. 37. b. 39. b. 41. a.

En ceo brief le Vic' poet summon le Def. per son person, sil n'ad terre ubi poet estre summon 3. ibid. & Br. Summons 1.

The Sheriff is here to take Pledges of the Plaintiff de prosequendo. And to summon the Defendants to appear at the day before the Justices, &c.

## C A P. LI.

Retorn' de Summons in Attaint.

*Attaint.*

**P**Leg' de prof. { *Johan. Den.*  
                               *Richard. Fen.*

Sum. infranominat. { *Johan. S.*  
                               *J. N. (the def.)* { *Richard. G.*

Resid. Executionis istius brevis patet in quodam pannello, (or inquisdam schedul.) huic brevi annex. (or consut.)

*A.B. Ar. Vic.**Le panel.*

Nomina Vigint. &amp; quatuor milit.

*Richardus M. de N. Ar.* { Ad Numerum xxiv. And these 24 must be  
*T.B. de A. Ar. &c.* { knights, Esquires or Gentlemen, having  
                                   each of them 20 marks per annum, at the  
                                   least, of freehold. And one of them (at the  
                                   least) must be a knight, Co. Lit. 156. Fitz.  
                                   Attaint. 69.

Quilibet Jur. præd. per se separatim attachiat. est per pleg. C. & D.  
 Libr. Intrac. fol. 86. c.

Sum. Jur. prædict. *H.H. S.S.**Le petit jury.*

Nomina Jur. primæ Inquisitionis in brevi huic pannello annex. spec.

*E. M. Gen.**H. E. Gen. &c.*

{ For in an Attaint, the Sheriff must return  
 the names of all and every of the twelve  
 that were of the first Jurp: And must dis-  
 strain or summon them to appear, &c. and the  
 Process against them is, Venire fac. & Distrin.

Pleg. prædict. Jur. primæ { *Thomas Pitt.*  
 Inquisitionis. — { *Gulielm. Fit.*

Pleg. de prof. { *Jo. D.*  
                               *Ri. R.*

*Aliter.*

Sum. infranominat. { *J. D.*  
                               *J. N.* { *Ri. F.*

Manu capt. sum' prædict' & utriusque eorum: *N.P. J.L. J.D. Ri. R.*

Resid. Execution. istius brevis patet in quodam pannello huic brevi annex.

Nomina xxiv. milit. inter *R.S. quer. & R.F. Defend. A.B. C.D. E.F.*  
 ad numerum xxiv.

Sum:

Sum. Jur' prædict' & eorum cujuslibet, *J.D. R.F.*

Manuapt' sum' prædict' & eorum utriusque, *J.P. R.C. F.D. E.G.*

Nomina Jur' primæ Inquisitionis unde in brevi huic schedulæ annexo fit mentio, *J.B. D.C.* ad numerum 12.

Sum. Juratorum primæ inquisitionis & eorum cujuslibet, *J.D.R.R.*

In an Attaint the Sheriff may make these Returns.

Quod ad distr. in militem, & alios, &c. breve tarde deliberat. fuit. *Intr. 85. b.*

*Sur summ. del petit Fury*, Quod quilibet eorum per se separatim per se Attach' sit per Pleg' *Intr. 86. o?* quod distr' sunt, viz. quilibet eorum per catalla ad valenc', &c. *Intr. 86. b.*

Quod breve præd' in omnibus servit' & execut' *Intr. 90.*

*Nihil, vers' ascum des Jurors, & que l'auters sont distr. Intr. 92.*

Mandavi ballivo libertat. &c. 93. f. Retorn tales 5. Et quod non sunt plures 94.

Manuapt, summonit' prædictorum, & utriusque eorum, *J.L. H.P. R.S. T.V.*

Maincaptors o? Mainpernoys ned not to have any Addition, but their names of Baptism and surname sufficeth.

*Et uncore exigent gift vers Manuaptors ou Mainpernoys, & ils serront utlage pur le Non appearance del party pur que ils imprist, 10 E. 4. Exigit 49. Ideo quare.*

18 H. 8. 5. *In an Attaint the Sheriff upon the Distress cannot return that*  
Br. 1. *the Defendant is dead; for there are no words in the Writ to com-*  
*mand the Sheriff to warn the Defendant.*

46 E. 3. 18. *In an Attaint the Sheriff returned that he had summoned the*  
Br. 22. *Jury as in an Assize; and for that no Mainprile of the Summon-*  
*ers and Pledges was indorsed, &c. therefore a Summons, sicut*  
*alias, was awarded, Fitz. Reor. 72. Yet lxx lib. Intr. fol. 86. No Ma-*  
*nucaptors were returned.*

41 E. 3. 15. *In an Attaint the Writ is, diligenter inquir' qui fuer' Juratores*  
Br. 115. *primæ Inquisitionis; and therefore if the Sheriff shall happen to re-*  
*turn eleven of the first Jury, and another which was none of them,*  
*yet he shall not be amerced; for he may mistake some in his enqui-*  
*ry of them: But in such case at the surmise of the party, Process*  
*shall go out against the twelfth; quod nota.*

In attaint the Sheriff may { Summon the Defendant in terra petita. Br. Sum-  
mons, 2. 18, 20.  
Return the Def. Nihil. Br. Summons 2. 18, 20. &  
Attaint 34.

In an Attaint the Sheriff returned a certain number of Juroys, but not to the full number; and averred in his return, that there were no more within his Wapliwick which might spend 20 l. per annum: *See Kellw. 97.*

The Grand Jury are to be warned the first day, *Finch. 485.*

And the Petty Jury must be all present when the Grand Jury is taken, *ibidem.*

And in an Attaint the Sheriff must summon the Tenant to be at the Recognition o? Trial, *Fitz. 108. 1.*



*Attachment sur Appel.*

Non est inventus is a good return in an Attachment sur appel de mort, ou de Robbery.

*F. F. quæ tuit uxor D. F. infranom. non invenit mihi pleg' de prosequendo. Ideo ad executionem istius brevis nihil per me actum est.* *Plegij de prosequendo.*

*Retorne sur Attachment, Manu captus est per, &c. Intr. 84.*

Now the form of every Original Writ is in this manner, Si *A. fecerit te securum de clamore suo prosequendo, &c.* whereby the Sheriff is commanded, that if the Plaintiff finds him Pledges, (sc. any men to be his Sureties) that he will prosecute the Suit, then to execute the Process (as in the Writ is mentioned) against the Defendant, to be before the Judges at a certain day, to answer thereto, &c. *F. 53.*

And therefore the Sheriff must take such Pledges of the Plaintiff, and must return them; and if the Plaintiff will not find Pledges, the Sheriff may return, quod nihil fecit, quia petens non invenit sibi plegios, &c. *1 E. 3. Fitz. Pledges 14.*

Also in every Writ, which hath therein this clause expressed (sc. si *A. fecerit te securum de clamore suo prosequendo, &c.*) the Sheriff may delay the Plaintiff by making this Return following; *Infranomatus A. B. non invenit mihi pleg' de prosequendo istud breve. Ideo ad executionem ejusdem nihil per me actum est: Qd he may execute the Writ, without any Pledges, &c.*

Note also, That the Sheriff is not to return the names of any as Pledges (either for the Plaintiff or Defendant) except they consent and agree thereto; *Stat. 27 E. 1. c. 2.* and if he do, shall be grievously punished: And yet for the Plaintiff the Sheriff returneth two common Pledges; or at least the entry is so, *Finch. 53.*

*Co. 2. 61.*

*Fitz. 195. b.*

Also note, That the King, nor Queen (in regard of their dignity and prerogative;) neither Infants shall find any Pledges de prosequendo, &c. *Fitz. 31. f. Br. Pledges 29.*

Also in a *Quid juris clamat, Scire fac. or per quæ servitia*, the Plaintiff shall find no Pledges, *Co. 8. 61. Fitz. Pledges 1.*

Note, That the Sheriff must take Pledges of the Plaintiff for the pursuing of his suit; otherwise the Plaintiff in many cases may be non-suit without danger: And the Sheriff for not taking Pledges shall be amerced, *Fitz. Pledges 1. & 7.* But though there be no Pledges returned, yet the Writ being served, it is well enough: *Fitz. Pledges 10.* For the returning of Pledges sameth to be but matter of form; and the Plaintiff may find Pledges at any time, hanging the Writ, *18 E. 4. Br. Pledges 21.*

These Pledges de prosequendo may be found in the Chancery, and how, and by whom, vide the Register, fol. 228. & *Finch. 53.*

*Les Pledges de prosequendo, si ne sont troves al vic', ou in le Chancery devant, poent estre trove en le Court, ou le brief est retorne, Finch. fol. 53. On poent estre trove al Assises al vic. Fitz. Pledges 7.*

*Et coment que ceo soit forsque matter de forme, uncore si le plt. ne trove Pledges al primes, ne al darein, quære si ceo ne soit error.*

*Et per ascuns le def. ne poet appear, nec nest compel d'appear, devant que le plt. ad trove Pledges, 22 H. 6. Br. Pledges 32.*

Note, That where a Writ cometh to the Sheriff, which ought to be served by the Baplist of a Franchise or Liberty, the Sheriff ought first to take Pledges (of the plaintiff) de prosequendo, before he writes (or makes his precept) to the Baplist to serve the Writ; and then

E e

(after

(after Pledges so taken by the Sheriff, and his precept directed to the Baplift) all the further execution of the Writ doth appertain unto the Baplift: And the Sheriff may return the Pledges, and the Baplift may return all the rest, 22 Ass. pl. 3. Br. Pledges 15. & 21 H. 7. fol. 14. Quære concerning the return by Precepts.

But if the Baplift of the Liberty shall take the Pledges de prosequendo, the Sheriff shall be therefore amerced, &c. And therefore the Sheriff needs not to make any precept to the Baplift of the Liberty, to execute the Writ, until the Plaintiff hath first found Sureties before the Sheriff himself, 14 H. 6. Fitz. Amerc. 2. Br. Ret. 61.

And yet by some Opinions, The Baplift may take Pledges de prosequendo, well enough, 22 Ass. pl. 3.

## C A P. LIII.

## Retorn. de Capias, Alias &amp; Pluries.

*Capias in de-  
bitor.*

**I**nfranominatus A. B. non est inventus in balliva mea.

*Aliter,*

Infranominati A. B. & C. D. nec eorum alter, inventus est in balliva mea.

And if the Sheriff shall return it thus, Infranom. A. B. & C. D. non sunt inventi in balliva mea, it is good enough, without saying, Nec eorum alter, or quod nullus eorum est inventus; for that shall be implied.

If there be three or more then thus: Infranominatus A. B. & ceteri Aliter. Defend' infranominati non sunt inventi in balliva mea.

These Writs may be returned in divers manners, as followeth. First, If the Sheriff will \* not, or cannot serve or execute the Writ, then thus, A. B. infra scri' non est inventus in balliva mea post receptionem istius brevis, vel post advent' hujus brevis.

\* *Quære*  
how it can  
stand with  
their Oath  
not to serve  
it, or not  
to endea-  
vour it, to  
their best  
power, &c.

*Nihil retorne sur le Capias, Vide 8 Rep. 2. Fitz. Process 224. & libro In-  
trac. fol. 109. d.*

But the Sheriff may not return, quod defendens non est inventus in balliva, or non fuit infra ballivam suam, post, &c. prout ei aliqua via (vel modo) constare poterit: But he must return Non est inventus generally and directy, 9 H. 6. Fitz. Ret. 9.

*And if the party be taken, then thus:*

Virtute istius brevis cepi J. W. infra scriptum, cujus corpus coram Justic' infra script' ad diem & locum interius content' habeo parat. prout breve istud exigit & requir', &c. vide lib. Intr. 109. c.

Infra script. J. W. captus est per corpus suum, cujus corpus ad diem, Aliter. &c. habeo paratum prout interius mihi præcipitur, vel sic secund' exigent' hujus brevis.

Virtute istius brevis mihi direct. cepi corpus infranominati J. S. cujus Aliter. quidem corpus coram Justic. infra script. ad diem & locum infra content. parat. habeo, prout interius mihi præcept. fuit; vel prout istud breve in se exigit & requirit.

Infra script. J. S. captus est per corpus suum, cujus corpus ad diem & Aliter. locum infra content. paratum habeo prout, &c.

R. S. Infranominat. non est inventus in balliva mea, & quoad capiend'

*Aliter bail,  
libert.*

*J. F.*

*J.F.* infranominat' mandavi *R. S.* ballivo libertat' de *S.* qui plenum return' habet omnium brevium & execut' eorund' cui executio istius brevis totaliter pertinet faciend', extra quam libertat' nulla executio istius brevis inde per me fieri potest; qui quidem ballivus mihi sic respondit. quod cepit corpus præd' *J.F.* cujus corpus prædict' *R. S.* coram Justiciar. Domini Regis infra script' ad diem & locum infracontent' paratum habebit; vel sic, qui quidem ballivus null' mihi dedit responsum. Vide lib' Intr. 109 c. d.

**But note, That wheresoever the Sheriff returneth Cepi corpus, if the Sheriff shall not have the prisoner so as he appeareth at the day, the Sheriff shall be amerced, 11 R. 2. Fitz. Respond. 14. & hic c. 37.**

**Where there be two or more of one name, how the Sheriff may safely make return, &c. hic c. 61.**

*J.D.* infranominat. fugit ad libertat. *J.E.* Armig' & continuè ibidem moratus fuit ideo ut ipsum capere non possum; **this is a good return;** and yet if the King be a party, the Sheriff is to enter the Liberty, and to execute the Process, &c.

Ante adventum istius brevis mihi directi *J. S.* infranominat' intravit Sanctuarium sancti Petri Westm. in Com. Midd. & in eadem adhuc moratur, per quod corpus præd' *J. S.* coram Justic' infra script' ad diem & locum interius specificat' habere non possum, prout, &c. **But note, Now by the Stat. 1 Jacobi c. 25. that so much of all Statutes as concern Sanctuaries made before Anno 35 Eliz. be repealed.**

Virtute, &c. Cepi corpus *A. B.* infranominati, & ipsum ad Gaolam Domini Regis castri sui de *C.* commisi, ibidem salvo custodiendum, &c. Quem postea prætextu cujusdam alterius brevis dicti Domini Regis mihi direct', & huic brevi annex' à prisione illa deliberari feci.

Virtute, &c. Cepi corpus, *A. B.* infranom', &c. Et ipsum ad Gaolam, &c.

Posteaq; viz. tali die & anno, prætextu cujusdam alterius brevis dicti Domini Regis mihi directi, cujus transcript' vobis mitto huic brevi annex' prædictum *A. B.* à prisione illa deliberari feci; Et ideo corpus prædict' *A. B.* coram Justic' infra script' ad diem & locum infra content' habere non possum, prout interius mihi præcipitur.

Virtute, &c. Cepi corpus *J.C.* infranominat' cujus corpus coram Domino Rege ubicunque tunc fuerit in Anglia, ad diem & locum infracontent' parat' habeo, prout interius mihi præcipitur.

*Et si le Defendeur que est issint prise, soit malade en prison: ou si le vicount ne voit faire aucuns expens. ou custas' pur luy amener al Westm. devant les Justic' solonque le purport del brief, tunc sic;*

Virtute istius brevis *A. B.* infra script' captus est per corpus suum, & in tali prisione sive Gaola adeo languidus detentus, quod corpus ejus ad diem & locum interius content' habere non possum absque mortis periculo.

Virtute istius brevis mihi directi Cepi corpus infranominati *J. S.* qui quidem *J.* est in prisione Domini Regis de *C.* adeo languidus, quod ob metum mortis ipsum coram Justic' infra scriptis ad diem & locum infracontent. habere non possum, prout interius mihi præcipitur.

Qui quidem *J.* tantis vexat. infirmitatibus, quod ipsum sine magno mortis periculo propter corporis sui debilitatem coram Justic. infra scriptis, ad diem & locum infracontent. habere non possum, prout interius, &c.

*E. D.* infranominat. captus fuit per *J. C.* constabularium villæ de *D.* apud *T* in Com. *D.* pro suspicionem felon. & ea de causa in Gaola prædict.

diſt' ſub cuſtodia mea detentus fuit, & in eadem Gaſla adeo languidus eſt quod nullo modo laborare ſive carriari poteſt : Vel ſic, cujus corpus paratum habeo coram vobis ad diem, &c. infracontent', ad faciend' quod iſtud breve in ſe exigit & requirit.

*Aliter.*

Quod ante adventum brevis iſtius præd' R. D. captus fuit, &c. Et in priſona, &c. detent', virtute cujuſdam querelæ verſus ipſum per nomen R. D. &c. in placito Debiti ſuper demand' 20 l. in curia, &c. ad ſectam J. G. levat', &c. Liber Intrac.

*Que il eſt in priſon per Capias ad ſatisfac' in Det.*

*Que il eſt in priſon per Condemnation, in placito debiti, &c.*

*Quod ante adventum iſtius brevis, le Def. fuit commiſſus per duos de conſilio Regis, &c. Corpus tamen ejus coram Juſtic' inſcripſi' ad diem parat' habeo, Fitz. Attur. 14.*

*Vide plus pur tiel retorne, Libro Intrac' f. 109. c. d.*

*Superſed' ſur Capias.*

Virtute iſtius brevis vobis certiſco quod poſtquam iſtud breve mihi liberat' fuit ad capiend' R. T. & alios defendentes in iſto brevi ſpecificat', idem R. & alij infranominati prout erunt mihi breve Dom' Regis de ſuperſed' quod huic brevi eſt conſut' virtute cujus ſuperſed' omnino.

Infranominatus R. T. deliberavit mihi breve Domini Regis de ſuperſed' quod quidem breve huic brevi eſt annex. Ideo ulterius ad executionem iſtius, Nihil per me actum eſt.

*These two laſt ſeem to be good Returns, if the Superſedeas be delivered to the Sheriff (or Officer) before the party be arreſted &c. But if he be arreſted or taken upon the Capias, and after he delivers a Superſed' of an older date to the Sheriff, now the Sheriff may not deliver him; for it was his fault not to deliver the Superſed' before he was arreſted, 19 H. 6. 43. And now upon the return of the Sheriff he ſhall be delivered by the Court, Crompt. 145. vide Fitz Ret. 16.*

*Superſed' poſt Capi corpus.*

Virtute iſtius brevis mihi directi Cepi corpus infranominati B. C. qui poſtea protulit mihi breve Domini Regis de Superſed. mihi directi, & huic brevi conſut'; Ideo corpus ſuum coram Juſtic' inſcripſi' ad diem & locum infracontent' habere non poſſum prout interius mihi præcipitur.

And yet this laſt ſeems to be no good return, for that the party is ſtill adjudged a priſoner, for that he was once taken, and therefore the Sheriff was to be amerced for ſuch a return, Vide Fitz. Ret. 16.

But theſe Writs (of Capias, &c.) are ſeldom or never uſed to be returned by Sheriffs; for Attornies do uſe to return them themſelves; but that muſt be done with the leave and ſufferance or conſent of the Sheriffs, otherwiſe the Attornies cannot juſtify the ſetting of the Sheriff's name to their Writs.

*Tard.*

Upon a Capias de Appel de mort, the Sheriff returneth quod breve adeo tarde ſibi venit quod illud exequi non potuit propter brevitatem temporis, and it was holden to be a good return. 8 H. 4. 21.  
Br. 34.

But upon a (Capias ad reſpond. &c.) Tarde is no good return, for the manifold miſchiefs which may follow thereon; and therefore in ſuch caſes the Sheriff ſhall be amerced if he returns a Tarde, 2 H. 4. & 21 H. 6. Fitz. Ret. 37. 42.

*Moreuus.*

Upon a Capias the Sheriff returneth that the party is dead; quære if this be a good return. Br. 125.

But in a Præcipe quod reddat, as alſo in a Scire facias, and upon a Corpus cum cauſa, it is a good return that the Tenant or Party is dead, Br. Ret. 125.

If the Sheriff returns that the party is dead in priſon, he muſt further

ther shew that the Coroner had the view of the body, Et. 3 H. 5. Fitz. Ret. 107.

7 H. 4. 11. Br. 107. Upon a Capias the Sheriff returned quod cepi corpus, and yet hath not the body in Court at the day of the return, he shall be amerced: And if it were upon a Capias ad satisfaciendum, the Plaintiff may have his Action against the Sheriff for the Debt, as upon an Escape; for by such return the Sheriff hath concluded himself.

Br. 100. 102. 20 E. 4-3 H. 6. 3. 13 H. 8. 1. Upon the Capias the Sheriff returneth cepi corpus, & quod est languidus in prisona; *Languidus.* This is a good return, if it be true that the party is sick indeed; and yet upon such a return quod languidus est in prisona, a Duces tecum may be awarded to the Sheriff to bring in the prisoner, or else the Defendant if he will appear, shall be received so to do, Vide libr. Intrac. fol. 400. d.

11 H. 6. Br. 223. The Sheriff upon a Capias returned Mandavi ballivo, & quod ipse cepit corpus, sed illud hic habere non potest quia languidus est, &c. And the Court being informed that he was not sick, a Writ was directed to the Bailiff to return the body, and to appear; and upon examination it was found that the party was not sick, whereupon the Bailiff was fined, and committed to the Fleet.

And our Books seem to vary in this point, some allowing the Sheriff's Return, quod cepi corpus, sed non possum habere propter malady. Vide 22 E. 3. Fitz. Ret. 94. But 31 E. 3. Fitz. Ret. 85. the Sheriff for the like return was amerced.

Upon a Capias the Sheriff returned that the Defendant was so sick, that he could not take or carry him out of his house for danger of death, and it was adjudged a good return, Fitz. Ret. 105. & 122.

The Sheriff being commanded to have the Body at a day, returned quod languidus est, and the return was holden to be naught, and the Sheriff was amerced, 41 E. 3. Fitz. Ret. 71.

And yet the Sheriff may keep the Body after the day of the return, for he is chargeable to bring him in by his own return.

## C A P. LIV.

*Retorne de Capias ad satisf.*

**V**irtute istius brevis mihi directi cepi corpus infranominat' A. B. cu-  
jus quidem corpus, coram Justic' infra-script' (vel coram Domino Rege) ad diem & locum infracontent' parat' habeo ad satisfaciend' infranominat. C. D. de debito & damnis infra-specificat' prout interius mihi præcipitur. *Capias ad satisf.*

Virtute istius brevis mihi directi cepi corpus infranominati A. B. cu-  
jus corpus ad diem & locum infracontenta paratum habeo, Plo. 441. *Aliter.*

A. B. Ar' Vic.

Upon the Capias ad satisfac' if the execution be duly done by the Sheriff, and that the Plaintiff hath his demand, though the Sheriff returneth not this Writ, it is no danger to him, See hic c. 38.

Upon a Capias ad satisfac' non est inventus, is a good return, Libr. Intr. fol. 109. d.

And

And so is Nihil ibidem.

But let the Sheriff take heed, if herein he return Capi corpus, that he hath the Body in Court at the day otherwise, he is chargeable for the whole debt, by reason it is an escape, &c. See Br. Ret. 107.

If a Writ of execution shall come to the Sheriff against a prisoner (in the Gaol) who is attainted of felony, here the Sheriff may return that the prisoner is attainted, and that therefore he cannot take him in execution: But if the Sheriff shall serve the execution upon such a prisoner, and after the prisoner getteth his pardon for the felony, yet if the Sheriff shall suffer his prisoner to go at large, the Plaintiff at whole suit the execution was, may bring his action of debt upon the escape against the Sheriff, and shall recover; for altho' by the attainder the execution were suspended, yet by the pardon it was revived: It was the case of one Croft a prisoner in Newgate. Anno.

*Laffels fuit prise in execution sur Capias ad satisfac' hors del Bank le Roy, & de leschequer issist brief de Prærog. de Habeas Corpus, teste jour devant l' arrest, & retourne devant le Capias, per que le vic. amesne le corps in l'eschequer, & la monstre le cause del detainer, d'estre d'aver le corps al jour del retourne, &c. Et ilonque le prisoner fuit commit al Fleet in execution pur le dit det, & auxi pur det le Roine que il la confes in Court; Puis Habeas Corpus vient del Bank le Roy al jour, &c. Et Gardian amesne le Corps, & monstre tout le matter en son retourne ideo, le prisoner fuit remande, &c. Dyer 179.*

*Sur Attachment de Priviledg' in trespass per Rythe (un Attorney del Bank) versus Kemp, returnable a certain jour, & le Def. fuit apres condempne in auter Brief de Priviledge, & Capias ad Satisfac' issist retourne apres le dit primer: Et al jour del primer retourne, le vic' port le party, & retourne ambideux les brief. Mes dit que son entent ne fuit de retourne le execution devant le jour (specialment fesant mention del primer matter de retourne,) Et hoc fuit fait bon, et polirie, pur luy sauver indemnes d'escape, &c. Et al preyer del Plainiff le vic' fuit discharge, le Def. & commit in Execution al Fleet, Dyer 192.*

*Capias utlagat', Plus hic exigent.*

Virtute, &c. Capi corpus A. B. infranominat' cujus corpus coram Justic' infrascript' ad diem & locum infracontent' parat' habeo prout interius mihi præcipitur; residuum vero exec' istius brevis patet in quadam inquisitione huic brevi annex'.

Sur Capias utlagatum, Non est inventus, is a good return thus; Infranom' J. S. Non est inventus in balliva mea:

Residuum execut. istius brevis patet in quadam Inquisit. huic brevi annex.

Inquisitio Indenat. capt. apud, &c. Qui dicunt super Sacram. suum quod J. S. in dicto breve nominat. nulla bona neq; Catalla, Terr. five Tenementa habuit aut tenuit in Com. præd. die Jovis prox. post festum Sancti B. An. Regni Dom. Regis nunc 3. in dicto Br. specificat. Nec unquam postea; quæ in manus dicti Dom. Regis capi ac seisciri possunt, ad noticiam Jurator. prædict. In cujus rei testimonium, tam sigillum vicecom. præd. quam sigilla Jurator. lpræd. huic inquisitioni Indent. sunt appensa. Datum die, An. & loco, supradict.

This enquiry must be, what Lands, Goods, or Chattels the party Outlawed had, the day of the Outlawry, or at any time after.

And upon the Capias Utlagatum, if the party be found, the Sheriff shall take and put him in prison, without Bail or Mainprise, for that he had the Law in contempt, hic cap. 96.

Also upon the Capias Utlagatum, the Sheriff may seize and keep his Goods, &c. hic cap. 15. See plus hic cap. 15.

Also upon the Capias Utlag. against an Infant of the age of four-ten years, the Sheriff may imprison him, and may seize his Goods as forfeit, as it saith, Country Just. cap. 77. & Co. l. 128.

Bracton, lib. 3. fol. 125. b. num. 5. saith, Minor qui infra aetatem vij. annorum fuerit, utlagari non potest, nec extra legem poni: quia ante talem aetatem non est sub lege aliqua, nec in Decima; Non magis quam scemina, quæ utlagari non potest, quia ipsa non est sub lege, sc. in Franco plegio sive Decima, sicut masculus duodecim Annorum & ulterius, &c. Minsh. Sed forma sic fieri potest.

Upon a Capias Utlagatum, when the Sheriff maketh his Warrant to his Under-Sheriff or Baplist, &c. for the taking of the party Defendant it were good for him also to take Bond of his Under-Sheriff, or Baplist, with Condition to bring the Defendant to Prison, if he be Arrested or taken; and this would make good Execution of this Process: Whereas now the Under-Sheriffs and Baplists, if they have taken a man upon a Capias Utlagatum, they will take Money of both parties, (first of the Plaintiff to take the Defendant, and after of the Defendant to let him go again being taken, pretending that it is to reverse the Utlary which they have nothing to do withal) the Defendant being taken thereupon, ought presently to be put in prison, and there to remain until some Attorney hath reversed the Utlary for him; whereas no Under-Sheriff, nor Sheriff's Baplist, ought to practise as an Attorney for the time they are in that Office, Wilk. & hic postea, cap. 117.

*Auter Returns sur Capias Utlagat. cu Exigent.*

*Nihil, est bon Return (sur Capias Utlagat.) Lib. Intrac. 109. b.*

*Que les Coroners sont absent al Comit. Ideo, &c. Intr. 334. b. 336.*

*Que nul Coroner fuit la forsque un que refuse de pronouncer le utlar.*

335.

*Que ne fuerunt plures Countees, 335.*

*Quarto Exactus, & non habuit tempus plus, 335.*

*Superfedeas pur un; & vers l'auter 4 exactus, & non sunt plures, Com.*

336.

*Superfed. pur lun, & utlary vers l'auter, 336.*

Multis modis potest dici captus & detentus, sc. pro debito xli. versus ipsum recuperatum in tali curia.

Vel captus est per præceptum Dom. Regis.

Vel captus est super Recogn. fact. in Cancellar.

Vel captus est super appel. pro morte hominis.

Vel de roberia, &c.

Infra scriptus R. V. captus fuit apud D. decimo die Maij anno infra scripto, per T. P. ballivum Domini Regis, & mei, virtute cuiusdam warranti, prætextu hujus brevis per me facti, & sibi directi: Et super hoc præd. R. V. cum aliis ignotis Vi & armis, viz. baculis, &c. in dictum ballivum insultum fecerunt, & seipsum a custodia præd. ballivi recull. & nunquam postea eundem R. V. in balliva mea invenire potui.

*Respons.*

Executio istius brevis patet in quadam scedula huic brevi annex.

*Aliter.*

Virtute brevis Domini Regis mihi directi, & huic scedula annex. feci quoddam warrant. meum cuidam J. M. ballivo meo itinerant. ad capiend. & arrestand. E. G. in dicto brevi nominat. secundum exigen. ejusd. brevis, Qui quidem ball. meus virtut. warrant' mei præd. nono die J. Anno Regni Dom. Jacobi Regis infra script. xx apud D. in Com. præd. cepit

*Scedula.*

cepit & arrest' corpus præd' E.G. Et adtunc & ibidem ipsa E.G. in custodia sua fuit (q̃ habuit) super quo F. G. de D. prædict' in comitatu præd' gener' & T.M. de eisdem villa & com. gen. adtunc & ibidem Vi & armis, &c. in præd' ballivum meum insultum fecerunt, & ipsum ball. meum adtunc & ibidem contra legem & consuetud' Regni dicti Domini Regis Angliæ, & contra voluntat' ipsius ballivi mei imprisonaver' & ipsum ballivum meum in prifona ibidem per spacium unius horæ adtunc detinuer' & viginti denarios in pecuniis numeratis, de bonis, catallis, & denar' ipsius ballivi mei adtunc & ibidem præd' T. M. cepit, ac præf. E. Vi & armis præd' adtunc & ibidem à custodia dicti ballivi mei cepit & recusser: Necnon eadem E. seipsam adtunc & ibidem à custodia ejusdem ballivi mei recussit contra voluntat. dicti ballivi mei, & contra pacem dicti Dom' Regis nunc, &c. Et postea eadem E. non fuit inventa in ball' mea', *Vide libr' Intrac. f. 579.*

*Refcons.*

Virtute istius brevis mihi directi feci quoddam warrant' cuidam R.P. ballivo meo hac vice itineranti, ad capiend' & arrestand' infranom. T.L. secundum exigentiam istius brevis; qui quidem R. P. virtute warrant' prædict' postea, scilicet secundo die Maij anno Regni Domini Regis infrascript' vicesimo, apud B. in comitatu prædict' cepit corpus intranom. T.L. de B. præd' in dicto comitatu Cantabr. Qui quidem T. die, anno, & loco supradict', Vi & armis in præf. R. P. ball' meum præd' insult' fecit, & ipsum verberavit, vulneravit, & maletrastavit, ita quod de vita ejus desperabatur. Et idem T. adtunc & ibidem à custodia præd' ballivi mei, & contra voluntatem suam recessit, escapiavit, & recussum fecit contra pacem dicti Dom' Regis nunc, &c. Et postea idem T. L. non est inventus in ball. mea.

*Aliter.*

Virtute istius brevis feci quoddam warrant' meum W.H. ballivo hundred' de H. qui mihi sic respondit, quod ubi ipse virtute warrant' præd' ball' Hund. decimo die S. anno Regni Dom' Regis infrascript' vicesimo apud C. cepit quendam J.S. & ipsum usque in castrum Dom. Regis de C. ducere voluisset, ibidem salvo custodiend. quodque illuc vener' quid' J. T. & R.S. cum pluribus aliis ignot' Vi & armis arraiat' modo guerrino, & à custodia dicti ballivi mei apud præd' W. præd' J. S. cepit & abduxer. Et sic ob metu mortis suæ ipsum J. S. evadere permisit, Et ea de causa corpus J. S. præd' coram Dom' Rege ad diem & locum infracontent', ubicunq; &c. habere non possum, prout interius mihi præcipitur. Et ulterius vobis certifico, quod post præd' decimum diem, &c. prædict' J. S. non fuit invent' in balliva mea.

*Aliter, per Rescuff. & ball' Hund.*

Virtute istius brevis mandavi J. S. ballivo meo libertat' de D. in com. præd' (qui habet plenum retorn' omnium brevium, præcept' & warrant' sibi inde direct.) Qui quidem J. S. tali die & anno apud P. in comitatu præd' T. S. in brevi huic scedulæ annex' nominat', & virtute ejusdem warrant' sibi direct' cepit & arrestavit, & ipsum T.S. in custodia sua occasione præd' adtunc & ibidem habuit & tenuit, ac quidam Johan C. nuper de S. in comit' prædict' L. (aggregat' eis quamplur. aliis malefactor' ignotis, pacisq; Dom' Regis peturbator') ad numerum viginti personar' modo guerrin' arraiat' Vi & armis, viz. glad' pugionibus, scut' & bac' in ipsum ballivum meum adtunc & ibidem riotose insultum fecerunt & ipsum verberaver' vulneraver' & male tractaver' ita quod de vita ejus desperabat' & prædict' J. C. & alij, &c. ipsum T. S. extra custod' dicti ballivi mei adtunc & ibid' ceperunt & recusser' & ad sui juris ad largum ire permiser' ac idem T. S. seipsam extra custod. dicti ballivi adtunc & ibidem similiter recussit, contra pacem dicti Dom' Regis, &c. Et postea idem T. non est inventus in balliva mea.

*Aliter de Rescuff. & Riot.*

Ego J.H. miles vic' virtute istius brevis feci quoddam warrant' J.B. & P. D. *Aliter.*

P. D. ball' meis hac vice itinerantibus ad arrestand' & capiend' R. F. ad satisfaciend' infranominat' W.P. de debit' & dampn' infra specificat' prout interius mihi præcipit' virtute cujus warranti J.B. & P.D. ball' tali die & anno apud H. in Com' præd' arrestaver' præd' R.F. prout per warrant' illud eis præcipiebatur ac idem R.F. ac quidam G.F. d: G. in Com' prædict' cum aliis ignotis Vi & armis videlicet gladiis baculis, &c. in prædictos J.B. & P.D. eisdem die & anno apud H. in Com' præd' insultum fecer' & ipsos male tractaver', & ad tunc & ibidem recussum fecer' virtute cujus recuss' idem R. F. a custod' illa ad tunc & ibidem contra arrestationem supradictam recussit, evasit & escapiavit; quapropter præf. R.F. ad diem & locum infranomin' habere non possum; & ulterius vobis certifico, quod post eundem diem prædict' R.F. non fuit inventus in balliva mea.

Virtute istius brevis quoddam warrant' meum feci & direxi cuidam T. C. ballivo meo ad attrahend' infranomin' J.C. prætextu cujus idem T. C. nono die J. ann. Regni Domini Regis infrascript' vicesimo apud B. in Com' infrafer' cepit & arrestavit præd' J.C. eum coram me ducere volens & intendens, ad faciend' & recipiend', prout in isto brevi mihi præcipitur; Et postea videlicet dicto nono die J. ann. vicesimo supradicto, præd' J.C. apud B. præd' in Com' præd' in præd' T. C. ballivum meum insultum fecit, Et ab eodem ballivo ad tunc & ibidem fugit, evasit & recussum fecit, Et postea eundem J.C. in balliva mea invenire non potui.

Aliter.

But for these former Returns of a Rescous (by some opinions) it seems they are not good, and that the Sheriff shall be amerced for such Returns; for the Sheriff is to bring the party at is peril, if it be in time of Peace: And he might have taken Posse Comitatus, to have aided him therein; And besides, the Sheriff may have his Writ of Rescous against the Offenders, and shall recover so much as he was amerced, Vide 16 E. 3. Fitz. Retorn. 110. & hic cap. 36.

And yet where the Sheriff shall return that the party hath been Rescued, &c. per ignotos, it seemeth the Return is good; for then it doth not appear that he can have any Writ of Rescous, Fitz. Ret. 110.

## Capias Excommunicatum.

The Sheriff (or other Officer) to whom such Writ of Excommunicat. Capiend.) or other Process shall be directed, needs not bring the Body into the King's Bench at the day of the Return; but shall only return the Writ thither, with Declaration briefly in what manner he hath served and executed the same, St. 5 Eliz. 23.

If the Sheriff, &c. shall return Non est inventus, then a Capias shall be awarded with a Proclamation therein, commanding the Sheriff, &c. in the full County Court, or at the Assizes, or Quarter Sessions, to make open Proclamation, ten days at least before the Return thereof, that the party yield his body to prison within six days: And after the six days, the Sheriff, &c. shall make return what he hath done thereupon, &c. (the offenders to forfeit 10 l. for such default.) And so a Capias Infinite shall go out with like Proclamation; and a forfeiture of 20 l. for every other default, to be presently estreated, &c. ibid.

If the Offender yield his body, the Sheriff, &c. shall presently commit him to prison, there to remain without bail, &c. ibid.

If the Sheriff, &c. do make an untrue Return upon any Capias in

a Writ de Excom. Cap. That the party hath not yielded his body upon any Proclamation made, where indeed he hath yielded, &c. he shall forfeit to the party grieved, 40 l. &c.

Also note, That if a Rescous be made to the Sheriff's Servant, Bayliff Errant or other Officer, it shall be returned as done unto the Sheriff himself; for the Arrest is the act of the Sheriff himself, and therefore the Rescous to the servant is a Rescous to the Sheriff himself, Br. Retor. 66. 17 Eliz. Dyer 241. accordant. But if it had ben the Bayliff of a Franchise or Liberty, the Return had ben good; or else the Sheriff might there have returned, Quod nullum dedit respons. Dyer 241.

And yet I have seen the report of a Case in Banc. 31 Eliz. where the Sheriff returned a Rescous, Quod Mandavit ballivo hac vice tantum, qui cepit corpus, & Ad rescous luy del Bayliff; and exception was taken to his Return, and the former Book, 39 H. 6. alleaged: But the Court held the Return to be good enough, by divers Presidents; for notwithstanding that the Rescous to the Sheriff, or Bayliff, be a Rescous to the Sheriff himself; so as he may return it in his own name if he will; yet that is not compulsary, but that he may return it in the name of his Bayliff.

Vide plus hic postea tit. Retorne del habeas corpus.

### C A P. LV.

Capias ad valentiam.

**U**Pon this Writ the Sheriff is to Summon the Def. (i.e. the Douchee) to be before the Justices at the day mentioned in the Writ, &c. And he is to return the name of the Summoners.

The Sheriff is also to seize the Lands of the Douchee (i.e. to such a proportion as the Writ mentioneth) into the Kings hands, by the view and valuation of lawful men of that County, and is to return the certaintie of the Lands, and the day of such his seizure, together with the names of those viewers, and of the Summoners, under his Seal, as it seemeth by the form of the Writ, Regist. 12.

And this seizure must be of such Lands and Tenements of the Defendant (or Douchee) as he hath in Fee-simple by Purchase, or as shall descend to him in Fee-simple, Ibid.

Upon this Writ against divers, the Sheriff returned that one of them had nothing, &c. And that of the other he had taken according to the proportion: But for that the Sheriff cannot appoition without a Warrant, he was amerced, Fitz. Ret. 93.

*Cessavit per biennium.*

*Cessavit per  
biennium.*

**V**irtute, &c. Justic' infrascript. certifico quod 20 die Maij Anno Regni, &c. Cepi in manus Domini Regis 3 Messuag', &c. infrascript' pervisum A.B.C.D.E.F. & G.H. proborum & legalium hominum de balliva mea, prout interius mihi præcipitur.

*Retorna*

*Retorna Brevis ubi Clericus non habet laicum feodum.*

**V**irtute istius brevis mihi directi Justic' infrascript' certifico, quod *Clericus non infranominatus T. H. clericus est beneficiatus in Episcopatu Lon- habet laicum* don nullum habens laicum feodum in balliva mea ubi potest summon *feodum.* Nec est inventus in eadem.

A. B. Ar<sup>s</sup> Vic<sup>s</sup>.

Retorn. de Distringas versus Clericum. Vide hic retorn. de Distring<sup>s</sup> *Distring. Clericum.* hic cap. 56.

**I**n a Scire fac<sup>s</sup> against a Chaplain (or Clerk that is beneficed) upon a Recovery in a Quare impedit, the Sheriff ought not to return quod Clericus est beneficiatus nullum habens laicum feodum, &c. for this is not to be returned, but where a Distring<sup>s</sup> or Capias in Debt, or trespass goeth out, which are a coercion: But in a Scire facias the Sheriff hath nothing to do but only to warn the party by his person: And yet if in a Scire fac<sup>s</sup> the Sheriff returns, quod est Clericus beneficiatus, nullum habens laicum feodum, &c. Et quod non est inventus, &c. this is a good return; for then he cannot be summoned, if he can neither be found, nor hath Lay-fa.

The Sheriff returneth that the Parson ante adventum brevis, or post receptionem brevis, or before the return of this Writ, had resigned his Benefice, &c. Et quod non habet nec habuit bona neque catalla infra, &c. these seem to be good returns, See 2 E. 4. fol. 1. Br. 94. & 2 H. 7. fol. 10. sed 39 H. 6. Fitz. Ret. 30. contra.

**I**n Trespass or Debt, against a Clerk, Nihil habet, is a good return; And in a Fieri fac. to have Execution of Arrearages of an Annuity, the Sheriff ought to return, quod nihil habet post receptionem brevis, Fitz. Retorn. 30.

**I**n a Quid Juris clamat, The Sheriff ought not to return, quod Clericus est non habens laicum feodum, but he ought to distrain him upon the Land in demand, Fitz. Ret. 59.

But note, That Clerks or Ecclesiastical persons (in most cases) upon Process out against them, are to be summoned (or warned) by their person; or else if they have any Lay-fa, by their Land: And if the Officer cannot find him to summon him by his person, nor that he hath any Lay-fa whereupon to summon him, then the Sheriff may return, quod est Clericus beneficiatus, Nullum habens laicum feodum, &c. Nec est inventus, &c. Et donques le Plt. avera brief al Evesque que il face venir son Clerk; & le Evesque luy ferra a venir per sequestration del Eglise.

Corpus cum causa.

Upon a Corpus cum causa, it is a good return that the party is dead, 32 H. 6. 27. Br. 125. *Corpus cum causa.*

A Corpus cum causa went out of the Kings-Bench to the Sheriff of York, to have a prisoner in his custody in the said Bench at a certain day; and the Archbishop of York being President there, commanded the Sheriff that he should not deliver the prisoner, &c. and all this matter was returned by the Sheriff; and it was holden that the Sheriff should be grievously amerced for not executing the Writ; for he should have taken Poss. Com<sup>s</sup>, &c. Crompt. Author's des Courts fol. 78,

Auxi in le case avants dit fuit dit per Seignior Catlin Chief Justice, que in 14 E. 3. brief d'aver corps issist de Banco Regis, & apres le Vic' ad Privy Seal a luy direct per le Roy, luy certifiant que le Roy ad luy pardon, & pur ceo luy command de surcease de luy persuer, & uncore intant que le Vic' ne execute le brief fuit amerce grievousment; Car in ceo Court nous teignomus plea coram Regina ipsa, per que ceo est le plus hault Court le Roy (parlent hors del Chancery ceo que ils voile;) Et il dit ouster que ceo Court est de tiel dignity, que in quel Prison que il soit, nous poiomus command l'Officer de amesner luy icy: Et si home soit in le Tower per commandement del Conncil, nous poiomus mander luy icy per brief de Corpus cum causa direct al Constable del Tower: Et il dit ouster que le Cardinal, esteant Chancellor d' Anglitter, command un al Fleet, & per Corpus cum causa il fuit amesne in cel Court in temps Fineux Chief Justice, & jour done al Attorney le Roy per 2 jours adire quid potest, per que il serra delivrer, & pur ceo que al jour pris il rien dira, fuit dismis: Mes il except le absolute power de Roy d' Anglitter, & parle de son Ordinary power, quant al execution de Justice; Et dit ouster al Carus Serjeant le Roy (que preia que le Vic' soit amerce) que issint serra; Et que Attachment isserra de Attacher le Cardinal, & le Vic' pur son contumacy; & de mesme opinion fuit Justice Whidden & Corbet, & Southcot. Et Catlin dit in ceo case, que ils ne usont de monstre in le brief pur que ils mis pur homes, mes ceo nous reserve-mus in nosres peccus, car poet estre pur treason, on grand conspiracy, Crompt. ibid.

Nota si home condemne (& son corps mise in prison sur execution) aveigne in Chancery per force del Corps cum causa, il ne serra lessa al bail, mes serra mise al prison arere, si le vic' retourne ceo special matter, sc. que le prisonier est condemn per judgment done vers luy, &c. Et ceo est per force del Stat. 2 H. 5. c. 2. Fitz. 251. e.

De more hereof in the return of Habeas Corpus.

Rotorna brevis orig. in conventionione, pur levier fine, ou autrement.

Pleg' de prof.  $\begin{cases} \text{J. D.} \\ \text{Ri. F.} \end{cases}$

Sum. infranominat.  $\begin{cases} \text{Jo. D.} \\ \text{Ri. F.} \end{cases}$

CIVILIS.

In a Writ of Covenant to levy a Fine, Nihil samps to be no good return; for the Sheriff ought to summon him in terra petita. 10 H. 6. Fitz. Ret. 12. Br. Ret. 122. dit quare.

In Writs of Covenant the Sheriff may summon the Defendant by his person, Br. Summons 1.

In other Writs of Covenant Nihil is a good return, Fitz. Ret. 12.

Nota, quod in breve de Conventionione, Non fit breve de attachiamento, quia oportet quod partes compareant personaliter in Curia. Regist. 165.

Also in this Writ Mandavi ballivo libertatis, &c. may be returned, Intr. 133. b.

¶ That Clericus est nullum habens laicum feodum, Nec bona laica in balliva sua unde aliqui fieri possunt, Intr. 138.

## C A P. LVI

*Retorna brevis original. in debito.*

216.

**P**leg' de prof. { *Johan. Den.*  
                               *Richard. Fen.*

Fitz. 119. b.

Sum. infranominat. { *Johan. S.*  
                               *R. S.       ,   Richard. G.*

A.B. Ar. Vic.

And if the Defendant be sufficient, Then thus :

Pleg. de prosequend. *J. S. R. M.*

Infranominat. *A. B.* nihil habet in balliva mea per quod summon:  
 potest.

Or thus :

Aliter.

Infranominati *A. B. & C. D.* (and if there be more Defendants than  
 two, then you must name but one, & ceteri def. infranominati) nihil  
 habent, nec eorum alter nihil habet in balliva mea quod summon:  
 possunt.

A.B. Ar. Vic.

*Other Returns.*

Attachiarus est per Pleg. 195. *Ou attach per biens, 207.*

Clericus est beneficiatus, &c. Intr. 189.

Mandavi ballivo, &c. Intr. 189.

Cepi bona per parcel. que remain pur default de emptor. Intr. 164.

Nulla plura bona, &c. in balliva sua unde residuum, &c. vide ibid.

*Nul biens ou terres, &c. Ibid.*

Non est inventus, *retorne sur Capias, &c.* ¶ Cepi Corpus, Plus hic  
 cap. 53.

And yet the former return of Nihil habent, is good without say-  
 ing, Nec eorum alter Nihil habet, &c.

In debt (or trespass) Nihil habet is a good return, without say-  
 ing, Nec habuit post receptionem brevis, or Nec habuit die quo, &c.  
*car ferra intend, 39 H. 6. Fitz. Ret. 30.*

Note, That in some cases the Plaintiffs Attornies do use to re-  
 turn the Original; as if the Defendant hath no freehold within  
 the Shire where he is sued, the Attorneys will return the original  
 in debt, or trespass, in this sort :

Pleg. de prosequend. { *Johan. Doo.*  
                               *Ric. Roo.*

But this is not warrantable without the Sheriffs consent.

In debt it is no return that the Defendant hath paid the Debt;  
 1 H. 7. fol. 8. Fitz. Ret. 34.

*Decies*

*Decies tantum.**Decies tantum.*

**J**ustic' infrascr' certifico, quod infranominatum A. B. ad diem & locum infracontent' coram vobis parat. habeo, ad faciendum & recipiendum quod curia Domini Regis infrascript' de eo consideraverit juxta formam istius brevis.

*Detinue.*

In a Writ of Distring. ad Deliberand', &c. in Detinue, it sameth Br. 89. to be no good return that there are no such goods.

In Detinue where it is awarded that the Plaintiff shall recover the thing demanded, he shall have a Distring. ad liberandum, &c. and the Sheriff may thereupon return Issues, or Nil, as the truth is, Br. Charters de terr. 34. Liber Intrac. fol. 212. a. &c.

In Detinue the Sheriff is to take Pledges of the Plaintiff de prolequendo: And he must also summon the Defendants to appear at the day.

*Nota que in Detinue, Judgment serra done que le Pls. recovers les Chattels & Damages, & Execution serra agard per Distres vers le Def. a deliver les Chattels (& auter execution n'a vera il de les Chattels) & del damages il avera Fieri facias, 6 R. 2. N. bre. 165.*

And (upon a Writ to enquire of the value) the Sheriff is to enquire by a Jury, and to return what damages the Plaintiff hath sustained as well by occasion of the detention, as also what costs of suit, &c. And further, if the Defendant shall not deliver or hath not delivered to the Plaintiff the Goods detained, then to enquire of, and to return the true value of the same goods, Liber. Intr. fol. 212. a. 215. d. 218. c.

The Sheriff may return Mandavi ballivo libertatis, &c. qui nulum dedit responsum, Liber. Intr. fol. 125. c.

He may return { Non est inventus, nec aliquem habet, &c. Intr. 217.  
Nihil habet, &c. nec est inventus, Intr. 218.

Note, That in an Action of Debt against Executors, if it shall appear that they have paid Legacies before Debts, or shall pay Debts upon simple contracts, before Debts upon specialties be discharged, or shall pay Debts before they be due, &c. these are a debasing by the Executors: And thereupon judgment shall be given against the Executors that the Plaintiff shall recover against them *de biens le mort*; and if there be not sufficient of the Testators goods left, &c. then Execution shall be *de bonis propriis*, upon a Scire facias against the Executors, Vide Br. Exec. 71. 81.

So if the Executors shall plead *ne unques Executors*, &c. and that be found against them, judgment shall be given against them *ut supra*, Br. Exec. 108.

*Retorn. de Fieri facias sur Devastavit.**Devastavit.*

**V**irtute istius brevis mihi directi, cepi in manus meas diversa bona & catalla que fuerunt infranominat' H.S. tempore mortis suae, in manibus infranominat. R. O. & K. uxoris ejus execut. testamen' prae'd' H. administrand' existen' ad valenc' 37 l. parcell' deb' infra script' quae quidem bona & catalla remanent in custodia mea pro defectu emptorum. Et ulterius Justic' infra script' certifico quod prae'd' R. O. & K. diversa bona & catalla quae fuer' prae'd' H. tempore mortis suae ad valenc. resid. deb. & dampn.

Wilk. 61.

& dampn' infraspēficat' vendiderunt, & devastaver' & denarios inde provenient' ad usus suos proprios converter. Ita quod resid' deb' & dampn' infraspēc' de bonis & catallis cujusdam H. S. levare seu fieri facere non possum. Et ulterius Justic' præd' certifico quod præd' R. O. & K. uxor ejus nulla habent bona seu catalla de bonis & catallis suis propriis in balliva mea unde resid' deb' & dampnorum infraspēficat' aut aliquam inde parcel' fieri facere possum prout interius mihi præcipitur.

Plus hic postea Retorne de Fieri fac. cap. 61.

*Disceit.*

**I**n a Writ of Disceit if the Sheriff returneth the one Summoner to be dead it is good, and yet the other Summoner shall be examined, &c. And if it be found that the Sheriff made no Summons, &c. the party shall be restored to his Land.

*Distingas, vers le Def.*

If the Defendant be sufficient, then thus :

Manucapt' infranom' J. F. { J. Doo.  
Exit, 3 s. 4 d. { R. Roo.

*Dist.*

*Nihil.*

Note, That the Sheriff must return hereupon reasonable issues, &c. hic c. 89.

J. F. infranominat' nihil habet in balliva mea per quod, nec ubi potest distingui.

J. F. infranominatus Nihil habet in terris, tenementis, & hereditamentis infrascript' per quod ipsum Distringere possum.

*En brief de accompt, sur le Disting. le vic. retorne Mainpernors, & quod non sunt exitus, et est adjudge bon retorne, Fitz. Ret. 120.*

In an attain upon the Distingas the Sheriff cannot return that the Defendant is dead, Br. Ret. 1, 18 H. 8. 5. otherwise he may.

In debt upon the Distingas the Sheriff returned Mandavi ballivo libertatis, &c. qui nullum dedit responsum; and for that he did not further return quod null. habet exitus in balliva mea, the Sheriff was amerced, Br. Ret. 23.

xl d. xl d.

T. D. A. B. & c. districti sunt, & quilibet eorum districtus est, per terr. & catall' sua secund' formam hujus brevis, unde exitus prout patet superius in eorum capitibus, & manucapti sunt, & quilibet eorum manucaptus est per se, viz. per J. D. J. S. P. H. quod sint, & eorum quilibet sit ad diem & locum infra scri' juxta tenorem hujus brevis, &c.

xl d.

A. quæ fuit uxor B. R. infrascript' Executrix Testamenti C. D.

*Vers execut.*

xl d. xl d.

B. R. J. S. alius executor testamenti præd' B. & T. S. tertius execut' testamenti præd' B. districti sunt, & eorum quilibet per se separatim districtus est, juxta formam hujus brevis unde exit' prout patet superius in capitibus eorundem; Et eorum quilibet manucaptus est per se, viz. per quatuor manucaptos nomine A. B. C. D. E. F. & G. H. Et non sunt plures executores testamenti ejusdem B. nec heredes ejus fuerunt in comitatu C. prout aliquo modo ad præsens constare mihi potest.

Distr' est per Catalla ad valenc. 20 d. Intr.

Pleg. de prosq. J. D. R. R.

A. B.

Sur le 2 ou 3  
distr.

*Vers. Clat.*

*A.B.* Infrascript' nihil habet in balliva mea ultra exitus prius forisfactum, per quod nec ubi distringi potest, prout mihi aliquo modo \* Nihil. constare potest ad præsens. \* Qua

Nihil.  
\* Quære  
de cest re.  
torne hic  
fol.

W.D. Archidiaconus R. nihil habet in balliva mea de laico feodo per quod, nec ubi distringi, Summon' seu Attachiarì potest aliquo modo prout ad præfens mihi constare potest.

And yet where the Proceſs is to diſtrain a Clerk, the Sheriff muſt ſummon him by his perſon, or by his land if he hath any *Tax-fee*, Finch. 135. *Avertment*, ſc. *ſile vic. retorne*. Quod eſt clericus beneficiatus, non habens laicum feodum, la Proceſs iſſer al ordinary a faire luy de viener, per liſſues de ſon benefice.

Tarde.

Quod distring<sup>r</sup> infrascript<sup>r</sup> A. B. ellendi coram Justic<sup>r</sup> infrascript<sup>r</sup> ad diem & locum infracontent<sup>r</sup>. istud breve tarde mihi deliberat<sup>r</sup> fuit, quod propter temporis brevitatem executionem inde facere non potui.

**Note, That in a Distringas per omnes terras suas, ita quoad habeas Br. 24. corpus ejus, &c. the Sheriff must return *I nunc* (upon the Defendant) and not *distrinxi*, &c. vide hic c. 26.**

In Debt of Treſpaſs upon the Diſtringas the Sheriff returned but 6 d. in Iſſues, and was therefore amerced; for that the Iſſues of the Defendant was leſs than the Charges of the Plaintiffs Writ of Diſtringas, Fitz. Amerc. 3. Br. 120. Plus hic, cap. 89.

Disr. Juv.

**Return de Distring. Jurat'. Se hic postea Return. de Venire fac'.**

Although the words of the Distring' be, quod Distringas per omnes terras & Catalla sua in balliva tua; yet the Sheriff ought to distrain him but reasonably, and not according to the words of the Writ, Kell. 117.

*Dower.*

**Down.**

**Admeasurement de Dower, Vide hic antea tit. Admeasurement.**

Retorne de Summ. in Dote.

Pleg. de prosequendo. {  $\mathcal{F}$ .  $D_{00}$ .  
  $R$ .  $R_{00}$ .

Sum. infranom. { J. H.  
J. W.  
W. C.

Et ad maxime usuale ostium Ecclesiæ Parochialis de P. infrascript<sup>æ</sup> Srat. 31 E.  
super diem Dominicum, scilicet quartum diem Julij, anno infrascript<sup>æ</sup> cap. 3.  
immediate post divinum servitium, (nulla Prædicatione ad tunc &  
ibidem existens,) publice proclam. feci secundum formam statuti, prout  
istud breve in se exigit & requirit.

*A. B. Ar. Vic.*

So that upon this Writ the Sheriff must first summon the Defendant upon the Land.

After he is to Proclaim the summons at the Church-dooz of the Parish, where the Land lieth.

And then he must make this Return as before.

And yet a summons to the person of the Defendant sa'meth sufficient  
without

without either Summons upon the Land, or Proclamation at the Church-door.

*Retorne de Petit Cape in Dower.*

**V**irtute, &c. tali die & anno cepi in manus Domini Regis tertiam partem tenementorum infrapec' cum pertin. prout interius mihi præcipitur.

*A. B. Ar. Vic.*

Upon the Petit Cape, the Sheriff must Summon the Tenant to answer his default only; and not to answer to the Demandant.

And upon the Petit Cape, the Sheriff is to seize the Lands into the Kings hands fifteen days before the Return, Vide Fitz. Grand Cape 19. Br. Ibid. 36.

*Retorna brevis de visu in Dower.*

**J**ustic' infra script', certifico quod virtute istius brevis mihi direct. habere feci infranom. *A. B.* visum de tertia parte tenementorum infrapec' in præsent' *N. C. R. D. W. B. & C. D.* quatuor milit' ex illis qui vis. illi interfuerunt. Et ulterius certifico quod dicti quatuor milit' præd. quod sint coram Justic. infra scr. ad diem & locum infracontent' ad testificand' visum illum prout per breve præd. mihi præcipitur.

*A. B. Ar. Vic.*

*En brief de Dower le demand fuit del 3 part del Office, &c. le view fuit demand de ceo que poet estre mise in view, sc. le place ou le Office fuit, &c. Fitz. View. 90.*

*Dower, le Demand fuit del moiety de 20 l. Et le meson & un Carve del terre dont ceo issüe, fuit mise en view, Fitz. Dower 113.*

*Retorna brevis de seifina in Dote.*

Executio istius brevis patet in quadam scedula huic brevi annex'.

**J**ustic' Domini Regis Certifico quod virtute brevis Domini Regis mihi *Seifina in* directi & huic scedul' annex' decimo die *A.* anno, &c. habere feci *Dower.* *P. B.* vid. in brevi præd' nominat', plenar' seifinam de tertia parte manerij de *B.* cum pertinen' in eodem brevi spec', viz. de una aula & coquina, de doub' shopis in tenur' dicti *J.* cum liber' ingress. & regress. ab & ad eadem, nec non superiori parte domus mansional' in tenura *E. C.* ab introitu versus Austral' ac de uno clauso sefepali voc' *H.* continen' per estimac' quinque acr', ac de quatuor acr' pasturæ jacen' in boreal' fine, unius clausi voc' *B.* & de una acr' pasturæ voc' *C.* in brevi spec' tenend' præf. *P. B.* in sefepali per metas & bundas, nomine totius dotis ipsius *P.* ad ipsam *P.* contigen. de toto manerio in dicto brevi spec' prout per breve prædict' mihi præcipitur.

*A. B. Armig' Vic'.*

Executio istius brevis patet in quadam scedula huic brevi annex'.

**V**irtute, &c. & huic scedula annex' tali die & anno habere feci J. B. vid. in præd. brevi nominat. plenariam seisinam de tertia parte manerij de B. cum pertin' in eodem brevi specificat', viz. &c. (*& reherse les particulars ut in brevi*) tenend. præf. J. B. in special' per metas & bundas nomine totius dotis ipsius J. ad ipsam J. contingen. de toto manerio in dicto brevi specific' prout per breve præd. mihi præcipitur.

*Nota, que feme que Recev. Dower, ne poet enter, mes doit aver seisin deliver a luy per le Vic. Plo. 529. Co. Lit. 34. b.*

Upon an Habere facias Seisinam in Dote, de tertia parte, &c. the Sheriff returned that he offered to the Demandant the Seisin de Tertia parte Tenementorum prædictor. (and shewed in certain the parcels which should make the third part) by metes and bounds in severalt, according to the tenor of the Writ, and that the Demandant refused to receive them of him; this was holden to be a good return.

*Et icy nient obstant le refusal del demandant uncore fuit tenuis que le Entrie le demandant a tous temps apres fuit Congeable, eo que le certenty ap- piert, Dyer 278.*

But if the Sheriff in the beginning returns, *Quod habere fecit Seisinam*, and shews the parcels, *Quæ omnia obtuli deliberari, &c. sed ipse recipere recusavit*, this is repugnant, and therefore void, Dyer 278.

If a Woman recover in a Writ of Dower, the Sheriff may put her in Execution of Seisin by a Clod, or by Grass growing upon the Land, or by any Beast being thereupon, Et. 40 Ed. 3. Fitz. Dower 38. *Mes le feme ne poiet User les Beasts, &c.*

In a Writ of Dower, a Writ went to the Sheriff to deliver the Wife ten marks per An. in Land, and Rent, for her Dower, and the Sheriff delivered her in Land five marks in yearly value, and five marks in Rent issuing out of the Land whereof she was Dowerable, and it was holden a good Indowment, Br. Dower 61.

In Dower of three Manors, or three Acres, the Sheriff may assign to the Wife one Manor, or one Acre for all; and he may assign the whole Manor with the Advowson; or may assign the third part of each, and the third Presentment, 12 E. 4 Br. Dower 72. Ph. 63. 66.

If the Sheriff shall deliver to the Wife, the Moiety of the Lands whereof she demandeth Dower, it semeth no remedy against him, Br. Extent. 13. & Fitz. Execut. 265.

And note that in Dower, the Sheriff is to make Execution, and put the Wife in Execution of the third part by Metes and Bounds, if he can, 3 Eliz. accordant & Co. Lit. 34 & 32. And here the Sheriff is a Judge, and may execute the same himself, and shall not need to do it per Sacramentum, 12. &c. But, if the Sheriff and the Wife shall come together to the Land, the Sheriff may not make Execution by these words, or in this manner, *sc. I deliver the seisin of the third part of the Land according to the Recovery*; for that is not good, Fitz. Scire fac. 92.

In a Writ de Seisinam in Dote directed to the Sheriff, it is no answer nor good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Record supposeth, or mentioneth to be Tenant, Plo. Manxel's Case, fol. 14.

*Sur Recovery del 3 part del Manor in Dower, le vic. assigne al Feme un Copihold, ove autres ters, Dyer 251.*

In some Cases the Wife cannot have her Dowter assigned by Writs and Bounds, but must hold her Dowter *per my & per tout in Common*. As of the profits of a Mill, or of a Wood, which Coparceners hold, &c. Fitz. Avowry 91. Or of a Common of Pasture, Fitz. Entr. 75. Affize 435. Or of an Office, or of Lands held in Common, Fitz. 149. 1 K. And yet Co. Lit. 32. She may have a third part of the profits assigned to her, Vide.

*Return' brevis de inquirend' de dampnis in Dote, ubi tenens obiit seifitus.*

Executio istius brevis patet in quadam Inquisic' huic brevi annex'.

Inquisitio indentata capta apud Cantabr. in Com. præd. duodecimo die Jan. anno, &c. coram me A. B. Armig. Vic. Com. præd. virtute brevis Domini Regis mihi directi, & huic inquisition. annex. per sacramentum C. D. E. F. G. H. &c. (ad numerum duodecim ad minus) qui dicunt super Sacrament. suum, quod infranominat. W. K. quinto die Januar. anno, &c. apud K. in Com. præd. obiit seifitus in Dominico suo ut de feodo, de & in tenementis infralpec. Et quod tenement' præd. sunt clari annui valor. in omnibus exit. ultr. repris. 20 s. Et quod sex anni & tria quarteria unius anni dilabuntur, à tempore mortis præd. W. K. Et quod infranom. J. D. sustinuit dampna occasione dotis suæ infralpec' ad valenc' 40 l. In cujus rei testimon. tam ego præf. vic. quam Jur. præd. huic inquisic' sigill' nostra alternatim appolimus, die, anno & loco supradict. &c.

A. B. Ar. Vic.

Upon a Writ to Enquire of Damages, if the Jury will find no Damages, and the Sheriff maketh his return accordingly; although such Return be not good, yet the Sheriff shall not be amerced for this default of the Jury, Br. Retor. 26. Fitz. Ret. 66.

And yet by others it is a good return, that the Jury have no damages; for the Sheriff returneth what they did, 44 E. 3. Finch. 229.

7 H. 4.  
Br. 106.

In a Writ of Right a Writ de Mag. Affisa eligenda went to the Sheriff to summon and return four knights before the Justices of Assize, to choose the grand Assize, returnable such a day, and the Sheriff returned that there were no knights but Burgeses; whereupon the Sheriff was amerced, and another Writ went out, &c. and the four knights were demanded, who came to the Bar with their Swords girt about them, &c. And so it seemeth (by the opinion of Mr. Brook) that the Sheriff may return them knights, although they be no knights. See the like hic antea fol. plus hic cap. 86. Vide Co. L. 294. that if there be not four knights, the next to them in the County shall be taken.

39 E. 3. 2.  
Br. 121.

In a Writ of Right the Sheriff returned two knights, and two Serjeants, or Esquires, to choose the Grand Assize; and it was holden a good return of two knights and two Serjeants (or Esquires): But then the Sheriff must return that there were no more knights within the same County: but to return two knights and two Serjeants for that there were no more knights within the same County, which were not of kindred to the parties, was holden to be an insufficient return: for that should have come in by the challenge of the parties, Fitz.

Retor. 60. And yet Quare for that the four Knights Electors are not to be challenged, Co. L. 294.

Retorne in Br. *Que le Plt. invenit sibi pleg. de clamore suo prosequend. & vid. &c.*  
de Droit. *Que le Defendants summonit. sint per, &c. — — Intr.*  
243.

The Jurp in a Writ of Right is called the Grand Assize, being four Knights, or others, in default of Knights, choosing a Jurp of seven unto them, Finch. 412.

Note, Where the four Knights had chosen 16 Knights to have the Grand Assize, and the Writ went out to summon them, the Sheriff returned, that there were not so many Knights in the County, as the four had chosen, Fitz. Trial. 97. Br. Jurors 45.

If the Plea be removed by Pone out of the County into the Court of Common-Pleas, the Sheriff needeth not to Return the Colt, whereby the Plea was removed out of the Lords Court, to the County Court, &c. Fitz. Record. 10. 10 E. 3

The Return of the Baplist of the Court may be thus, Quod præd. T. (the Defendant) Nihil habet in balliva mea per quod potest attachiari. Nec habet ballivum, nec inventus est, Liber Intrac. fol. 242. b.

## C A P. LVII.

## Ætate probanda.

**I**n a Writ de Ætate probanda awarded to the Sheriff, to enquire of the age of the King's Ward (who is come to his full age) it is required by Law, that every one that shall pass in that Enquest shall be of the age of 42 years: The Law intending thereby that they and every one of them should be of full age, at the birth of such Ward, because that such (in all likelihood) have better knowledge therein than others of lesser age have or can have. And the Heir that is in Ward, is to enform the Enquest by certain Signs and Tokens of the time of his birth: Come adire, que in mesme l'an, la fuis un grand tempest, ou Un grand Plague, vel simil. which signs he might hear from his Parents, &c. And which signs so given in evidence shall also be returned by the Sheriff, as well as the principal matter, 21 R. 2. Fitz. Livery 5. & Stamf. 79. & Br. Jurors 42.

But Quare whether this be so in use at this day, or no: Or whether the Church-Book where he was Baptized, be not a more material and more sufficient proof of his age; and so that it now shall not be so needful to have the whole Enquest of the age of forty three years as aforesaid, Vid. Fitz. 257. the form of the Writ directed to the Sheriff to return a Jurp before Commissioners to this purpose: But yet again the form of the Writ directed to the Electors in such Case, seemeth to imply that the Jurors should be of such age or years, that they may have knowledge of the birth and age of the Ward; the same Writ being in these words, Præcipimus quod, &c. probationem illam

illam per Sacram. proborum hominum, &c. per quos probatio illa Capi, & veritas ætatis melius sciri poterit & inquiri Capias, &c. Fitz. 253, 254- Old Na. br. 159.

*Now for the number of the Jury to enquire of the Age of the King's Ward, See hic cap. 86.*

*Ejectione firmæ.*

Plegij de Prosequendo { *Johannes Doo.*  
  *Rich. Roo.*

Infranominatus *A.B.* Attach. est per centum oves, precij viginti librarum. *Oz* Attachiat. est per Pleg. *B.C. D.E.*

Infranominati *C.D.* & *E.F.* nihil habent in balliva mea per quod Attachiari possunt.

*Eligend' Coronator'.*

**A**D Com. meum tent. (tali die & anno) in pleno Com. prædict', *Eligend. Coronator.* Virtute istius brevis, de assensu ejusdem com. loco *P. H.* infranominat', (qui diem clausit extremum) elegi Coronat. viz. *J.W.* qui (prout moris est) Sacramentum præstitit corporale quod ipse ea faciet, & conservaverit quæ ad Offic' Coron. in Com. præd. pertinent faciend', prout interius mihi præcipitur, &c.

*Eligend' Milit' Parliament.*

Virtute istius brevis mihi directi, in pleno Comitatu meo tent. apud Cantabr. tali die, &c. Anno, per assensum ejusdem Comitatus Eligi feci duos milites de Com. meo præd. vid. *E. P.* & *J.C.* ad faciend. prout istud breve in se exigit & requirit.

Virtute istius brevis mihi directi, ad primum Comitatu meum post receptionem ejusdem brevis, & in pleno Com. illo tent. apud *C.* tali die & Anno, Eligi feci duos milites gladiis cinctos magis idoneos, & discretos de com. meo præd', viz. *W. F.* & *J. S.* qui quidem milites plenam & sufficient' potestatem pro Com. (*02 pro se*, & Communitate Comitatus) præd. habeant, ad faciend. & consentiend. hiis quæ ad diem & locum infracont' de Communi consilio Regni Angliæ ordinar' contiger. & prædict. *W.F.* & *J.S.* manucapt. sunt per *J.P. W.B. J.D.* & *R.N.* ad essend. ad Parliament. Dom. Regis apud Westm. ad diem infracontent. ad faciend' prout istud breve in se exigit & requirit. Feci etiam præceptum virtute hujus brevis *J.P.* & *W.S.* ball. libertat. villæ de— in Com. meo, quod de eodem Burgo de *C.* Eligi fecerint duos Burgenses de discretior: & magis sufficient. quod sint ad Parliamentum dicti Domini Regis ad diem & locum infracontent', ad faciend. & consentiend. ut præd. est: qui quidem ballivi sic mihi respondent quod eligi fecerunt de præd. Burgo de *C.* duos Burgenses discretos, & magis sufficient. ad essend. ad Parliament. prædict. viz. *S.W.* & *R.W.* ad faciend. & consentiendum ut supra dictum est.

Virtute etiam istius brevis proclamari feci omnia in isto brevi content. secundum formam & effectum hujus brevis, prout hoc breve in se exigit & requirit.

Residuum vero executionis istius brevis patet in quibusdam Indenturis huic brevi annex.

*Eligend:*

*Eligend. Burg. Parliament.**Eligend. Burg.  
Parliament.*

**V**irtute, &c. ad proxim' Com' meum post receptionem ejusdem tent. apud C. tali die & ann. in pleno comitat. illo proclam' feci omnia in isto brevi content. secundum formam & effectum hujus brevis prout, &c. Resid. vero executionis istius brevis patet in quibusdam Indentur. huic brevi consut'.

*Indentura.*

Hæc Indentura facta tali die & anno inter A. B. Milit. Vic. Com. C. ex una parte & J. D. & C. B. &c. ex altera parte Testat. quod secund' formam brevis, huic Indentur. cons. (fact. proclamat. in pleno Com. meo tent. apud C. tali die & anno præd.) J. D. & C. B. & alij qui proclamac. præd. in pleno Com. præd. intertuer. secundum formam statutorum in brevi præd. specific. & secundum exigen. brevis illius, ad elig. A. D. & J. A. essend. Burgenf. Civitatis præd. ad Parliamentum in eodem brevi specificat. qui plenam & sufficientem potestatem pro se & Communitate Civitat. præd. habent ad faciend. & consentiend. prout breve illud in se exigat & requirit. In cujus rei testimonium partes præd. hiis Indent. sigilla sua alternatim apposuer. Datum die Ap. Anno, &c.

\* These persons must be free Citizens or Burgeses of the Town, and such as were choosen. See hic c. 92.

The like Indentures are to be made between the Sheriff and the Freeholders of the Shire, upon the choosing of their Knights for the Parliament, and word for word, as the former (mutatis mutandis) until you come to these words, Elegi A. D. & J. A. milites, gladiis cinctos pro Comitatu præd. ad Essend. ad Parliamentum in eodem brevi specificat. Qui plenam & sufficientem potestatem pro se & Communitate Comitatus præd. habent, &c. ut supra.

*Eligend' virid' Forestæ.**Eligend' virid.  
Forestæ.*

**D**omino Regi certifico quod infra nominatus J. H. ante advent. istius brevis mihi directi mortuus fuit, quodque ego post receptionem istius brevis mihi directi, in pleno Com. meo tent' apud C. in Com' meo 29 die Maij anno infra script' ex assensu ejusdem Com' loco præd' J. eligi feci quendam. N. S. Armig' viridarium Forestæ de B. infra script' ad faciend' prout breve istud in se exigat & requirit.

*Retur. Brevis ad Inquirend. de Dampnis.*

Executio istius brevis patet in quadam inquisitione huic brevi annexa.

*Inquire de  
dampnis.  
Vide hic Tres.  
pass.*

Inquisitio indentat' capta apud C. in Com' Cantabrig' tali die & anno, coram A. B. Armig' vic' ejusdem Com' virtute cujusdam brevis Dom. Regis eidem vic' directi. & huic inquisitioni consut. per Sacrament' R. S. M. G. &c. (ad numerum 12 Jurator') qui dicunt super Sacrament. suum quod A. P. in brevi huic inquisitioni consut' nominat' sustinuit dampna occasione transgressi. per J. H. in prædicto brevi nominat. prout in eodem brevi fit mentio ad 40 s. Et pro misis & custagiis ipsius A. P. per ipsum circa sectam suam in hac parte appositis ad 40 s. In cujus rei, &c.

## C. A P. LVIII.

*Retorne de Elegit.*

**E**Xecutio istius brevis patet in quadam inquisitione huic brevi annexa.

*A.B. Ar. Vic.*

*Cantab.*

Inquisitio Indentat<sup>r</sup> capta apud *L.* in Com. prædict. decimo die Junij anno, &c. coram me *A.B. Armig. Vic. Com. prædict.* virtute brevis Domini Regis mihi direct. & huic Inquisitioni annex<sup>r</sup>, per Sacrament<sup>r</sup> *T.B. &c.* (& sic xij. plur. ad minus) qui dicunt super Sacrament. suum, quod *B. C.* in brevi præd. nominat. tali die & anno, &c. fuit seiscit. in Dominico suo ut de feodo, de & in uno Messuag. vocat. &c. cum pertin. jacent. & existent. in *L.* in Com. præd. modo in occupatione *A. J.* viduæ clari annui valoris in omnibus exit. ultra repris. 40 s. Ac etiam de & in uno gardino cum pertinen. vocat. &c. in *L.* præd. clari annui valoris in omnibus exit. ultr. repris. 20 s. Ac etiam de & in uno alio messuagio cum pertinen. in *L.* præd. scituat. jacen<sup>r</sup> & existen. prope, &c. super terr. cujusdam *R. A.* defuncti modo in occupatione *B. C.* vel Assign. suorum, simul cum omnibus gardinis & edificiis eidem messuagio spectant. sive pertin. clari annui valoris in omnibus exitibus ultra repris. 5 l. Ac etiam de & in uno alio messuagio vocat. &c. in *L.* præd. in tenura præd<sup>r</sup> *B. C.* clari annui valoris in omnibus exitibus ultra. repris. decem solid. Et Jur. præd. super Sacramentum suum præd. ulterius dicunt quod messuag. prædict. in tenura prædict. *C. D.* una cum gardino eidem messuag. jacent. & spect. cum omnibus & singulis suis pertinen. sunt vera & equalis medietas omnium & singular. terr. & tent. & hereditamen. quorumcunque in Com. nostro præd. *A.* in dicto brevi nominat. quam quidem medietatem ego præfat. Vic. deliberari feci *R. S.* in brevi prædict. nominat. tenend. sibi & assignat. suis juxta formam Statuti inde provis. ut liber. tenement. suum, quousque debitum & dampna sua in brevi prædict. mentionat. plenar. inde levaverit, prout breve prædict. in se exigit & requirit: Et ulterius Jurat. præd. super Sacramentum suum præd. dicunt quod præd. *B. C.* nulla alia sive plura bona habent seu die recuperac. debiti prædict. (02 die judicij) habuit bona aut catalla, terras sive tenementa in Com. præd. In cujus rei testimonium, tam ego præfat. Vic. quam Jurat. prædict. huic Inquisitioni sigilla nostra alternatim apposuimus, die, anno & loco, supradict. &c.

*Elegit.*

*A.B. Ar. Vic.*

Virtute istius brevis ego *A.B. Vic. Com. infra-script.* (tali die & anno) liberavi *J. B.* medietatem maneriorum in inquisitione huic brevi confut. specificat. cum pertinent. per exten. in dicta Inquisitione fact. tenend. sibi & assign. suis, ut liberum tenementum suum, quousque idem *J. B.* debitum & damp. sua infra-script. levaverit, prout interius mihi præcipitur.

*Aliter.*

Virtute istius brevis (tali die & anno) liberari feci infranominat. *A.B. medietat.*

*Aliter.*

medietat' maner' de S. cum pertinentiis, extent' ad annum valorem quatuor librarum sterlingorum in omnibus exitibus ultra reprimis. p. 12. Jur' in Inquisitione huic brevi consuet' nominat', de quo quidem manerio cum pertin' B. G. & E. uxor ejus fuerunt inde seisciti ut in jure ipsius E. in feodo ut de libero tenemento, die captionis Inquisitionis prædict', prout in eadem compertum est, Habend' & tenend' eandem medietatem manerij prædict' cum pertinens, sic extentam, prædict' A. B. & Assign' suis ut liberum tenement' suum, quousq; infrasp' 4 libras inde levaverit juxta formam istius brevis, Resid. verò execut. istius brevis patet in quadam Inquil. huic brevi consuet. &c.

Upon an Elegit against him that hath two Manors, the Sheriff may deliver the one Manor to the Plaintiff in the name of the Shire of all, and is not bound to deliver the Shire of each Manor; And so of two Acres of Land; but this seemeth to be where the two Manors or two Acres be of equal value, Br. Elegit 14. 12 E. 4.

*Sur Elegit, pur ceo que appiert sur le Inquisition que le Def. ad convey son terr. al autres sur condic. &c. Et uncore prist les profits continualment, le vic. retourne que il & le Jury (sur ceo trouve) sont in doubt si le terr. terra extend. & prefont discretion des Justices, Dyer 295.*

*Brief de extent fuit agard tempore Mariz, & le brief execute per inquisition in vie le Royn, mes devant le retorne el devy, & le vic. retourne ceo; quare si le retorne ne soit sans garrant, Dyer 206.*

The Sheriff may return the extent for Lands, and no Goods: Or may return the extent for Goods, and that the party had no Lands, Libr. Intr. fol. 261, 262.

The Sheriff may return Mandavi ballivo libertatis, &c. ibid.

He may return quod J. S. infranom. Nulla habet bona neque catalla in balliva mea, quæ C. N. infranom. per aliquod precium deliberari facere possum, ibid.

Or thus (as the case may be) sc. Nulla habet (or habuerit) bona neq; catalla in balliva mea, tempore Judicij (unde infra fit mentio) reddit. nec postea: or tempore captionis inquisitionis illius, nec tempore recuperac. præd. or Quarto die M. ult. præterit. in brevi specific. Quo die idem breve emanavit, nec unquam postea, ibid.

*Sur Elegit le vic. retourne, que il ad extend le terre le Def. mes ne poet deliver ceo al Plt. intant que un auter ad ceo in extent devant, ceo semble bon retourne: Et uncore le vic. pouvoit aver seise le terre & deliver ceo (sc. le reversion cum acciderit) al Plt. nient obstant que fuit in extent devant (come semble) fuit le case d'un Palmer in Banco Regis circa, 30 Eliz. vide Fitz. Retor. 112. hic return de extent.*

*Auxi si A. soit indebt al B. & sont terre soit in execution per Elegit (sc. le Moiety del ceo) & apres le Roy, ou auter person ad auter execution pur son debt, vers le dit A. icy le vic. poet deliver al Roy, ou auter person, le second moiety, & auxi le reverc' del primer moiety cum acciderit.*

Note that upon an Elegit, the extent and valuation of the Lands, and the pricing of the goods, must be by an Enquest (sc. per Sacramentum 12. proborum & legalium hominum) and not by the Sheriff himself; altho' the Writ speaketh of no Inquisition, Vide C. 4. 74.

Upon an Elegit the Sheriff returned that he had delivered to the Plaintiff goods and chattels of the Defendants, ad valentiam 20 l. per rationabile pretium, and shewed what the goods were in certain; and also that he had delivered twenty Acres of Land of the Defendants, quæ est medietas omnium terrarum, per rationabile extentu'; but returned

no inquisition, sc. per Sacramentum 12. &c. and it seemeth by the Court there, that the extent ought to have ben by inquisition, &c. and that the Sheriff himself cannot extend it, Dyer 100.

Also upon an Elegit the Sheriff is to make execution by mæts and bounds.

Upon the Elegit the Sheriff may return Nihil (Fitz. Execution 52. 58. Br. Exec. 64. 72.) or he may return that he hath extended the Land of the Defendant, but that he cannot deliver the same to the Plaintiff, for that another had the same in extent before, Vid. hic c. 28. & 26.

*Deliberat. post extentam factam super obligat. Statuti Stapule.*

**V**irtute, &c. liberavi infranominat. B. S. maneria, terras, & tenementa infrascript. habend. tibi & assign. tuis, ut liberum tenementum suum quousque tibi de debito infrascripto, una cum dampnis, misis, & expensis tuis plenarie fuerit satisfact. prout, &c.

Fitz. 266. c.

Upon an Elegit the Sheriff returneth, that the Conusor hath made a feoffment of divers parcels of his lands to divers Tenants, &c. and of all the residue that he hath infeoffed the King, the King's Lands are to be discharged, &c. But upon a Scire fac. to warn the other tenants to come at a certain day to shew cause why their lands shall not be put in execution, if the Sheriff returneth them Garnie, if they shew not cause to bar the execution, their lands shall be extended, &c.

*Brief de Estreperment.*

Note, that the Sheriff by force of this Writ may resist them which are about to (or would) make waste; and if otherwise he cannot stay or restrain them from making waste, he may imprison them, and may make his Warrant to others to imprison them; And if it be needful, he may take Posse comitatus for his aid, Co. 5. 115.

*Et ceo brief de Estreperment gist in action de Wast, cibien al ascun temps devant judgment, come apres judgment, & devant execution, Car il ne poet recover damages pur plus que il ad contain in son count, & il ne poet assign ascun wast fait apres le brief purchase, Foliambes Cale, Co. part 5.*

*Retorn de Extent sur Recogn. ou Statut.*

**V**irtute istius brevis mihi directi cepi corpus infranominat. W. W. cuius quidem corpus, ad diem & locum infracontent. parat. habeo, prout interius mihi precipitur. Extent.

W. W. infrascript. non est inventus in balliva mea. Et ulterius certifico quod seisiui feci in manum Domini Regis Manerium de, &c. cum pertin. in inquisitione huic brevi confut. specific. prout interius mihi precipitur. Libr. Intrac. fol. 598. Aliter.

ReAd. Execut. istius brevis patet in quadam (or prædict.) inquisitione huic brevi annex.

*A. B. Ar' Vic.*

Cantab.

Inquisitio indent. capta apud C. in Com. præd. 12 die Januarij Ann. &c. coram A. B. Armig. Vic. com. præd. virtute brevis Domini Regis mihi directi. & huic inquisitioni annex. per sacrament. T. B. &c. (ur super:) Qui dicunt supra Sacrament. suum, quod W. W. in brevi præd. nominat. die Recog. debit. in eodem brevi spec. fuit seisius in dominico

H h

suo

suout de feodo, de & in Manerio de A. in Com' præd' clari annui valoris in omnibus exitibus ultra reprim. C. l. Ac de & in Manerio de C. in Com' præd' clari annui valoris ultra reprim. C. l. Et ulterius Jurat' prædict' super Sacrament' suum præd' dic' quod præd' W. W. die Recogn' debet' præd' seu unquam postea, nulla habuit bona seu catalla, neque al' sive plur' terr' sive tenementa in Com' præd' ad eorum noticiam, quod extend' appreciari aut in manus dicti Domini Regis capi aut seisciri possint: Quæ quidem Maneria terr' & tenementa præd' cum pertinen' ego præfar' Vic. die caption' hujus inquisitionis cepi in manus dicti Domini Regis per extent' præd'. In cujus rei testimonium tam ego præfat' Vic' quam Jurat' præd' huic inquisitioni sigilla nostra alternatim apposuimus, die, anno & loco supradict', &c.

A. B. Armig' Vic'.

*Sur extent sur Stat. Merchant le Vic' retorne que le corps ne poet estre trouve, & que il aver extend le terr. & deliver al pls. Regist. 146. And note that if the Sheriff shall return that he hath extended the Land, and shall not return further that he hath delivered the same to the Plaintiff, he shall be amerced.*

*Sur extent sur Stat. Staple le Vic. retorne le extent del terr. & non des biens uncore bon, Br. tra. 438.*

*Le Vic. poet retorn que le def. avoit riens jour de le Recogn. fait, mes que il ad purchasé terres puis le temps, Terms del Ley, tit. Elegit.*

*The Sheriff may return Non est inventus, nec habet bona, nec terras.*

*¶ The Sheriff may find, Nul terr. si non jure uxoris quæ supervixit.*

*¶ que le recogn. purchase le terr.*

*The Sheriff returned quod nullus venit a receiver le terr. &c. Libr. Intr. 596.*

*Two sued to have execution of a Statute Merchant; the Sheriff returned that one of the Plaintiffs was dead, Fitz. Execution 38. Libr. Intr. 595.*

*One sued to have the body of the Conusor of a Statute Merchant, and the Sheriff returned the Conusor Mortuus, Fitz. Execution 97. vide Dyer 299.*

*The Sheriff returned that he had no land but in ancient Demesne, Ret' 109.*

*Aliter.*

*Virtute, &c. Domino Regi in Cancellaria sua, ad diem & locum infracontent' ubicunque tunc fuerit, certifico, quod tali die & anno seisinam & possessionem de & in Maneriis, terris & tenementis infrascript' infranominat' W. C. liberavi secundum exigen' istius brevis; ac infranom' H. M. non est inventus in balliva mea.*

*Aliter.*

*J. M. infrascript' non est inventus in balliva mea; Ideo ipsum capere non possum ad præsens. Sed quoad extendend' & appreciand' omn' terras & catalla ipsius, J. M. juxta formam istius brevis, Execut' inde patet in quadam Inquisitione huic brevi confut' Quæ quidem terr' & catalla in dicta inquisitione content', in manus Domini Regis seisciri feci.*

*Aliter.*

*A. B. infranominat' non est inventus in balliva mea; Et indeo virtute hujus brevis mihi direct' extendi & appreciari feci omn' terras & tenementa, bona & catalla præd' A. in dicta balliva mea: Quæ quidem extent' huic brevi est annex' ac etiam omn' terras & tent' præd' in eadem extent' specific' una cum dampnis & custag' suis rationabilibus levavi, juxta formam statuti inde editi & provisi, & secundum formam hujus brevis.*

**Upon**

Upon an extent of a Statute Merchant, or Staple, the Sheriff may return that the debtor is a Clerk, hic cap. 24. 25.

Upon an extent of a Statute Merchant, if the Sheriff returneth quod breve tarde venit, or returneth that he directed it to the Bayliff of some franchise, the Sheriff shall be punished. See hic c. 24. Stat. de Mercatoribus; tamen vide Libr. Intrac. f. 595. c. *Lon sur Capias sur Stat. Merchant, le Vic. retourne, Mandavi ballivo libertat. and also returned Tarde.*

Quod distrinxit partem per frumentum, vel per alia catalla, ad quod non invenit emptores, *semble bon Retourne Fitz. 133. b.*

Upon a Writ of Extendi facias, the Sheriff may return the special matter, sc. that he cannot make execution, for that another hath those Lands in execution by force of an Elegit, &c. Or that another is in by descent, &c. for that they are not to be put out of possession, without a Scire facias, &c. Fitz. Ret. 112. & execution 97.

Upon a Writ of Execution upon a Statute Merchant, it hath been holden a good return, that the party hath no Land, but only in ancient Demesne, 15 E. 3. Fitz. Ret. 109. Tamen quære inde; for by the Book of 7 H. 7. fol. 10. Lands in ancient Demesne may be put in execution upon a Stat. Vide hic c. 26.

Upon an Extendi fac. the Sheriff returneth that the Conusor is dead, and also an inquisition of the extent of the Lands of the Conusor; but in the inquisition no certain estate is returned; but generally that the Conusor fuit seifurus die Recognitionis fact. de Maner. de B. without shewing of what Estate; and this return was holden to be uncertain, insufficient and void; for that the word Seifurus, may be for life, or in fee-tail, in which cases the Land after the death of the Conusor is not extendable; and therefore in case where the death of the Conusor appeareth in the return, there of necessity his seisin must be found to be of an Estate of fee-simple only, Dyer 299.

Upon an Extendi fac. upon a Statute Staple, the Sheriff extended the Lands of the Defendant, and praised his goods, and seized them into the Kings hands, according to the Writ (but delivered them not to the Conusor, which he ought not to do until a Liberate cometh to him; yet he ought to have returned the extent and praise-ment.) And after a Writ of Prærog. came out of the Exchequer, commanding the Sheriff to levy first 100 l. for the King, &c. And the Sheriff returned the special matter upon the Writ out of the Exchequer, &c. Et ideo nihil inde fecit, &c. And the Sheriff was therefore amerced, and was compelled to return the extent in the Exchequer for the King's debt, Vide Dyer 67. & hic c. 25.

Upon an Extendi fac. upon a Statute Merchant, the Sheriff returned that he had extended the Lands, but did not return that he had delivered them to the Plaintiff: Whereupon it was moved that the Sheriff should be amerced, Fitz. Execution 38. & Fitz. Scire facias 117. & Fitz. Exec. 73.

*Aliter.*

## C A P. LIX.

*Retorne de Exigent.**Exigent.*

**V**irtute istius brevis mihi directi, ad Com' meum tent' apud castrum Cantab' in com' Cantab' infrascript' die Lunæ videlicet decimo die .f. anno Regni Dom' Regis infrascript' xix. infranominat' .f.c. & cæteri defend' infranominat' (if there be above two) primo exacti fuer' & non comperuer' nec aliquis eorum comperuit, ad Com' meum ibidem tent' die Lunæ videlicet vicesimo die Anno supradiet' præd' .f.c. & cæteri defend. infranominat' secundo exact' fuer' & non comperuer' nec aliquis eorum comperuit, Ad com' meum ibidem tent' die Lunæ videlicet decimo die .s. anno præd' præd' .f.c. & cæteri defend' infranominat' tertio exact' fuer' & non comperuer' nec aliquis eorum comperuit, Ad com' meum ibidem tent' videlicet duodecimo die .o. anno præd' prædictus .f.c. & cæteri defend. infranominat' quarto exact' fuer' & non comperuer' nec aliquis eorum comperuit, Et ad com' meum ibidem tent' die Lunæ videlicet tertio die .n. anno præd' prædict' .f. c. & cæteri defend' infranominat' quinto exact' fuer' & non comperuer' nec eorum aliquis comperuit. Ideo prædict' .f.c. & (or name them all) cæteri defend' infranominat' per Judicium .f.w. & w. R. Gen' Coron' dicti Domini Regis com' præd' secundum legem & consuet' Regni Domini nostri Regis Angliæ utlagat' sunt & quilibet eorum utlagat' est.

*Aliter.*

Virtute istius brevis mihi direct', ad com' meum tentum apud C. in comitatu C. infrascripto, die Jovis, videlicet decimo die .f. Anno Regni Domini Regis infrascript' 19. .f.c. infranominatus primo exactus fuit & non comperuit, Et ad com' meum, &c. (ut antea,) secundo exactus fuit & non comperuit: Et ad com' meum tent', &c. (ut antea) tertio exactus fuit & non comperuit: Et ad com' meum tent', &c. (ut antea) quarto exactus fuit & non comperuit, Et ad com' meum, &c. (ut antea) quinto exactus fuit & non comperuit; Ideo prædict' .f. c. per Judicium Coronatorum dicti Domini Regis comitatus præd', secundum legem & consuet' Regni Angliæ, utlagatus est, (or if it be a Woman) waviata est. Vide Co. L. 122.

Upon the return of the Exigent, it must appear that it was per Judicium Coronatorum (for they be Judges of the Outlawries) otherwise it is Error, 31 H. 7. fol. 33.

And the Judgment is, Ideo utlagatur per Judicium Coronatorum, Co. Lit. 288.

So note, That he which is sued, if he do not appear upon the mean Process, then upon the Exigent he shall be called (by the Sheriff) at five County Court days, to answer to the Law, and if he come not within that time, pro Exlege tenebitur (cum Principi non obediatur, nec legi) & extunc utlagabitur.

And no County ought to be omitted, but when that the Proclamation beginneth, the Sheriff ought to pursue the same at every County after without omission (auterment serra error) v. P. 371.

Mes le judgment serra prononce per le Coroner in le 5 County; & donque le Vic. doit faire retorne de ceo, &c.

Et si sur le Exigent le Vic. retorne quod non comperuit, sur ceo retorne le plt. avera un Capias utlagatum, vers le Def. &c. Mes si le Def. appear sur le Exigent

Exigent, il doit aver Superfedeas, & dunque le Plaintiff declarer vers luy, &c.

Et quant le Vic. ad Retorne le Utlary, ove le Exigent in le Court que agard le Exigent donques ceo est bon Utlary a tous intents, Fitz. 116.

Also the Return of an Exigent shall be void by reason of incertainty, as whear the Sheriff returneth the Exigent, quod ad Com. Lancaster. tent. ibid. &c. where it should be, ad Com. Lancaster. tent. apud Lancast. (or at some other certain place, whereto Ibidem might have relation.) So the Sheriff returneth the Exigent thus. Ad Com. tent. apud Castrum de Oxon, &c. And sets not down in what County.

So the Sheriff returneth Proclam. feci ad Com. tent. tali die, and shewed not what year, 27 H. 8. Br. Retor. 3.

Sur Exigent le Vic. retorne, quod al 5 Hustings, &c. le Defendant suit demand, & ne appert, & ne monstre in certain, in ceo Retorne, quant ceo 5 Husting. suit tenuus, ne in quel Lieu, per que le Retorne suit adjudge d'estre male, 39 H. 6. Fitz. Retorn. 29. & Exigit. 11.

Un Utlary suit reverse per Curiam, quia sur le Exigent, le Vicount retorne ad Comit. meum tentum (a tiel Lieu, & jour, prox. post Petri & Pauli Anno Regni, &c. Infranoninatus J. S. primo exactus fuit, & non comperuit, &c.) Et ceo parol, festum, fuit interlesse, Anno 30 Eliz. in Comuni Banco.

Upon an Exigent the Sheriff returned, quod ad Comit. tent. tali die, & ad tres Comit. prox. pracedentes präd. D. Def. exactus, non comperuit, sed Manucaptus per J. C. ad salvand. ei Comit. illius ne utlag. promulgaretur in ipsum prout mos est, &c. This was disallowed, and the Sheriff amerced, Retor. 88. 14 E. 3. fol.

An Exigent is a Writ that lieth where the Defendant in an Action personal will not be found; nor hath any thing within the County whereby to be attached or distrained: And it is directed to the Sheriff, to call and proclaim him in five County Court days, one after another, charging the Defendant to appear upon pain and danger to be Outlawed, Terms del Ley.

Exigenda est Condicio ejus qui quinquies in Comit. aperto exactus, aut vocatus ad comparandum, non venit, Ideoq; Exlex propter contumaciam proclamari potest. Dr. Cowell Index.

*Retorn. de breve de Exigend. cum Superfed.*

**V**irtute, &c. ad Com' meum präd' ibidem tentum die Jovis viz. 20. die A. anno präd' prädicitus J. C. quarto exact. fuit, & comperuit, & protulit mihi breve Domini Regis de Superfed', & est huic brevi annex' per quod ad executionem illius brevis ulterius faciend. Superfed. omnino, prout mihi in eodem brevi de Superfed' precipitur. Alior cum Superfed.

But where upon the Exigent the Sheriff returneth Reddidit se, he must have the body in Court at the day of the Return of the Writ, or else he shall be amerced: Except that the party be so sick as he cannot, &c. Vide Lib. Intr. fol. 335. b. c.

Also you shall find the like Return in Dyer fol. 223. where the Sheriff returned, Quod comperuit al. 5. County & protulit Superfedeas, &c. Vide Lib. Intr. fol. 335. c. d. & 336. a. b.

And yet you shall find that the Sheriff hath ben amerced for the like return, Lib. Intr. tit. Exigent in Retorn div. 8. Where the Sheriff had made his Return Ad Com. S. tent. apud G. tertio die, &c. An. &c. präd' R. C. primo exactus fuit & comperuit, & protulit mihi breve Dom' Regis, de eodem R. ulterius non molestand. sive ulterius utlagandum

lagandum, quod quidem breve, dicto brevi de exigi fac. Nihil actum est. Cujus quidem alterius brevis tenor sequitur in hæc verba. Henricus, &c. Vic. S. salutem. Cum (tali die, &c.) per literas nostras Patentes, de gra. nostra speciali, de protectione Prærogativæ nostræ, suscepimus dilectum fervientem nostrum R. C. unum. guard. Camera nostræ in salvam gardian. protect. & defen. nostr. &c. (reciting the same at large.) Tibi præcipimus quod ipsum R. contra tenorem liter. nostrar. præd. non molestes in aliquo seu graves. Teste, &c. Et quia præd. Vic. executionem dicti brevis de exigend<sup>o</sup> non fecit: Sed de executione ejusdem prætexu prædicti alterius brevis Superfed. Ideo idem Vic. in misericordia, & le Vic. sit amerce per les Justic. ad 40 s.

*Also upon an Exigent awarded, the Sheriff returned, que le Roy luy mande per brief de Privy Seal, que il avoit luy pardon, &c. & command que ne soit endamage, &c. Et issint il ad rien fait per reason de ceo commandment le Roy, & retorna le brief le Roy, &c. Mes le Vic. fust amerce, & novel Exigent agard, 14 E. 3. Fitz. Retor. 89. Plus hic c. 21. 29.*

An Exigent is awarded upon an Inditement. and the party findeth Sureties, and hath a Superfedas; but he delibereth that not to the Sheriff; by reason whereof he was Outlawed; and after he offered the Superfedas to the Sheriff, who refuseth the same: yet at the day of the return of the Exigent, if the party shall bring this Superfedas into the Court, the Outlaw shall be avoided thereby: But yet by not delibering of the Superfedas to the Sheriff before, the party shall be Outlawed, his Goods seized, and himself discredited, Crompt. Inst. de p. 145. tit. Superfed.

And note, That he which is sued, if he do not appear upon the mean Process, &c. then upon the Exigent he shall be solemnly proclaimed, demanded, or called by the Sheriff at five several Counties, sc. from County to County, each one after another to appear, and to yield his body, and answer to the Law, or else that he shall be Outlawed. And if he cometh in at any of the five Counties, the Sheriff is to take and imprison him: But if he cometh not in within that time, then the Sheriff with the assistance of one Coroner (at the least) is to pronounce him Outlawed, sc. to pronounce him to be out of the Protection of the King and his Law, Finch. 346. But the Judgment is to be given by the Coroner in the five Counties, and then the Sheriff is to return the same.

*Retorne de Exigent ubi unus reddit se, & alij non comperuer?*

**V**irtute, &c. Ad Com, meum ibidem tentum die Jovis, viz. 10. die A. anno prædict. J. C. & cæteri defend. infranominat. quinto exacti fuer. ad quem diem prædict. J. C. comperuit & se reddidit prison. Domini Regis castri sui Cantabr. Cujus quidem corpus coram Justic. infrascr. ad diem & locum infracontent. parat. habeo prout interius mihi præcipitur; sed cæteri defend. infranominat. non comperuer. Ideo, &c. ut supra.

The Sheriff upon a Capias Uclag. may return that the party is in prison upon a Condemnation for Debt, Libr. Inr. 336. b.

Also the Sheriff may return that the party yielded himself to the old Sheriff, who hath not delivered him, &c. Ibid.

*Languidus in prisona.*

**A**D Com' meum, &c. præd' J. B. comparuit, & se reddidit prisona Dom' Regis castri sui C. infra Com' prædiæ' & in eadem prisona modo remanet languidus, variis infirmitatibus detent. Ita quod propter corporis sui debilitat. & mortis periculum cariari non potest, & ea de causa corpus præd' J. B. coram Justic' infraſcripte ad diem & locum infracontent' ad præſens haber' non poſſum juxta formam hujus brevis, Vide Fitz. Retor. 94. *Le Vic. retorne que il aver priſe l'un, mes que il ne poet aver luy la pur malady, &c. quel retorne fuis allow, & Libr. Intrac. fol. 335. 336*

*Retorn. de Exigent ubi unus reddit se, alter proſert Superſed. tertius mortuus eſt, &c.*

**V**irtute, &c. ad Com' meum ibidem tent' die Jovis, viz. 10. die A. anno prædiæ' J. H. S. R. A. C. & D. P. quinto exact. fuer' & præd' S. R. se redd' prisona Dom' Regis castri sui Ca' in Com' præd' cujus corpus coram Justiciari' infraſcripte ad diem & locum infracontent' parat' habeo, ad faciend' id quod breve præd' in se exigit & requirit. Et præd' D. P. comparuit & protulit mihi breve Dom' Regis de Superſed' huic brevi annex' Ideo verſus eum ulterius procedere non potui: Et præd' J. H. mortuus eſt: Et præd' A. C. waviat. eſt. Ideo per judicium J. W. & W. R. Coron' Dom' Regis præd' J. H. utlag. & præd. A. C. waviat' eſt.

*A. B. Ar. Vic.*

And pet upon an Exigent, the Sheriff returned that the party was dead, and it was doubted whether it were a good return: Br. 125. Vide libr. Intrac. fol. 336. a. b. tiel Retorn.

And pet by other Authorities, such a Return is holden not to be good, but the Sheriff was amerced for such a Return; for that the Sheriff hath no authority by the Exigent, but to call the party from County to County, to appear, and answer the Law; and if he appear, then to take him and imprison him, &c. (hic cap. 15.) *& si un home in tiel case soit utlage, son heir poet assigne ceo (ic. quod mortuus fuit) pur Error, Vide Fitz. h. Retor. 104. 106. & 121.*

Also if after two or three Counties and Proclamations (and before the Return of the Exigent) the King shall happen to die; And in the next King's time the rest of the Proclamations be made, and then the Sheriff returneth the party Quinto exactus upon the same Exigent; this is erroneous; for that by the King's death the Writ did abate; and pet the Writ is not void, but is Error—7 H. 7. 5.

Pet Quare, whether the Sheriff must not return this Quinto exactus, and that the party must after assign this for Error.

*Retorna de Allocat.*

**A**llocat. illi quatuor Com. ad quos infranominat. T. C. exact. fuit & non comparuit. Et ulterius virtute istius brevis ad Com. meum tentum apud castrum Cantab. in Com. C. infraſcript. die Jovis, viz. Octavo die N. Anno Regni Dom. Regis infraſcript. Angliæ, &c. xix. præd' T. quinto exact. fuit & non comparuit; Ideo per judicium coronator. &c. (ut supra) utlagat. eſt, Vide Fitz. Exigent 14. Br. Exigent 24. & Procl. 3. Plo. 371.

*And*

And if it be a Woman, then thus: Ideo secundum legem & consuetudinem, &c. prædict. A. R. waiviata est.

If the Exigent be returned not fully served (without any fault in the Plt.) as where the Defendant after demand at two Counties, yields himself in Court, and getteth a Superfed. &c. If the Plaintiff brings a new Exigent, before any other County holden, he shall have the benefit of the former Counties; and therefore it is called Allocato Comit. Finch. 349. & 116.

Also an Outlary returned by the Sheriff upon an Infant (being above the age of fourteen years) is good, Hic cap. 36.

*Retorn. de Exigent inter duos Vic.*

**V**irtute istius brevis mihi directi ad Com. meum tent. apud castrum Cantabr. (in Com. Cantabr. infra script. die Jovis, viz. 10. die Anno Regni Domini Regis Angliæ, &c. infra script. xix. infranominat. R. K. primo exactus fuit & non comperuit: Istud breve sic superius indorsat. mihi deliberat. fuit, per J. C. Armig. nuper Vicecom. comitatus infra script. proxim. prædecessorem meum in ejus exit. ab Officio suo, ut superius in dorso hujus brevis. Et ad comitatum meum, &c.

*Aliter.*

*Pro defectu  
Coronator.*

Istud breve prout indorsatur, mihi deliberat. fuit per A. R. Ar. nuper Vic. Com. infra script. proxim. prædecessor. meum in ejus exit. ab Officio, Et ad Com. meum tent. apud castrum C. præd. in Com. præd. die Jovis, viz. 10. die D. anno præd. prædictus R. K. secundo exact fuit & non comperuit, &c. (ut supra.) Et si deficient Coron. ad Com. ad reddend. judicium, tunc Vic. retorn. brevia sua sic, viz. Et quod ob defect. J. W. & W. R. Coron. Dom. Regis Comit. præd. ulterius procedere non potui. And then upon this Return, the Coroners will be fined for every writ, unless they can make a good excuse,

*A. B. Mill. Vic.*

*Aliter cum Superfedens.*

*Pro defectu  
Coronat.*

*Pro defectu  
Comitat.*

Istud breve sic superius indorsat. una cum brevi dicti Domini Regis de Superfed. sibi annex. mihi liberat. fuit per A. B. nuper Vic. Com. præd. proxim. prædecessor. meum.

Also the Sheriff may Return, that the Coroners were absent, sc. Quod ad talem Comit. J. M. & J. G. Coronator. Dom. Regis Com. præd. solemniter exacti non vener. Ideo ad execution. brevis præd. ob eorum defectum ulterius ibidem procedere non potuit.

Or he may return that no Coroner was there but one, who refused to pronounce the Outlary, Libr. Intrac. fol. 334, 335, & 336.

Virtute, &c. Et ad Com. meum tent. ibidem 3 die N. dicto Anno 20 Domini Regis infra script. præd. T. C. quinto exactus fuit, & non comperuit, & pro defectu W. B. & R. Coronator. cum. præd. ulterius inde prosequi non potui. Vide Fitz. Exigent 14.

Virtute, &c. ad Com. meum, &c. Et quod non fuerunt plures comitat. in Com. præd. tent. a die receptionis hujus brevis prædict. usque ad diem retorn. ejusdem, per quod nihil actum est ad præsens; Vel sic, Et ideo in executione istius brevis ulterius faciend. nihil actum est. Vide Libr. Intr. fol. 335. & hic cap. 54.

Upon an Indictment before Justices of Peace, if the Exigent shall be returned, quarto exactus, and that he cannot call the party any more

more soze thortness of time, it semeth to be a good return ; And that an Exigi facias of new shall go out, without alledging the four Counties, &c. Crompt. 149, 155.

*Retorna Brevis de proclam. super exigent.*

**V**irtute istius brevis mihi directi, ad Com' meum tent. apud castrum Cantabr. in Com' C. infrascript. 21 die Martij anno 19 infrascript. primo proclam. feci. Et ad General. Session. pacis tent. apud Castrum Cantabr. præd. in Com' præd' 30 die Aprilis, An. 20 supradict. secundo proclam. feci ; Et ad maxime usuale Ostium Ecclesie de B. infrascript. super diem Dominicum sc. 10 diem Maij Anno Regni Domini Regis infrascript. Anglia, &c. 20 immediate post divinum servic', nulla prædicatio eadem Ecclesia adtunc ibidem existen' uno mense ad minus antequam infranomin. J. S. quinto exact. fuit, Tertio proclam' feci, Quod infranominat. J. S. se reddat mihi prout interius mihi præcipitur.

W.W. Mil' Vic'.

Virtute istius brevis mihi directi, ad Com' meum tent. apud C. in Com. C. infrascript. die Jovis 21 die M. anno Regni Dom. Regis infrascript. 20 primo proclamari feci. Et ad General. Session. pacis tent. apud C. in dicto C. (in partibus de M. infrascr.) die Jovis scilicet 3 die O. præd. anno 20 Dom' Regis infrascript. secundo proclam. feci. Et ad maxime usuale ostium, &c. (ut sup.) Tertio publice proclam. feci, Quod J.C. & ceteri omnes defendentes infranomin. se reddant infrascript' Vic. Ita q. idem Vic. habeat corpora eorum coram Justic. infrascript. ad diem & locum infracontent. prout istud breve in se exigit & requirit.

*Aliter.*

*Return. Br. de bonis Restituendis apres Exigit.*

**O**ne being Outlawed, sued a Writ of Error, and reversed the Outlawry, and had a Writ to the Bayliff, de bonis restituendis (which were taken away from him when he was Outlawed, &c. Here the Bayliff may not return (or plead) that he was not Bayliff ; but he must answer, whether he had the Goods, or no, and how they are divested out of his possession : Or else he must make deliverance thereof, if he cannot shew reasonable cause to the contrary, 6 H. 7. 9. Fitz. Ret. 36.

Un Procès fuit utlage, & apres le utlary fuit reverse, & un brief de Restitution fuit agard al Vic. pro bonis Restituendis (que fuer. al value de 100 l.) Le Vic. retourne que il aver vend les biens pur 40 l. & protulit precium inde in Curiam ; Mes le retourne fuit tenuis insufficient, Car le brief de Capias utlagatum, &c. ne garrant le Vic. vendition' exponere ; uncore 3 Justices doubt, Car le brief est, in manus nostras Capias, Ita quod de vero valore & exitibus eorum nobis respondeas, &c. Il s'ent semble al eux, que le Vic. poet vender eux. Et responder le value al Roy, & retainer les biens luy mesme, &c. Dyer 223. Sed vide Co. 5. 90. b. & 8. 143. Que si le utlary soit apres reverse, la Def. avera Restitution de ses biens, Vide hic cap. 15.

And so note, that (upon the King's Writ) the Sheriff in some Cases may seize Goods (to the Kings use) and may keep them, but may not safely sell them, as here before in case of Outlawry.

In some cases the Sheriff may seize the Goods, and may and ought to sell them; as upon a Fieri fac', See hic cap. 30.

## C A P. LX.

*Retorna Brevis de falso Judicio.*

**Q**Ue est in Natur' de Accedas ad Curiam; Ou de Recordare, Fitz.  
444.

Virtute istius brevis, assumptis mec. J. W. &c. Quatuor discret. & legal. milit. (02 hominibus) de balliva mea, in propria persona mea accessi ad Curiam Caroli Regis Angliæ de O. tent' apud, &c. (tali die & Anno) & in plena Curia illa Recordari feci loquelam, unde inde infra fit mentio: Et record. illud habeo coram Justic' infrasp. ad diem infracotent, quod huic brevi est confut. sub sigillo meo & sigillis W. C. D. & E. quatuor legal. homin. (ejusdem Comit. ex illis) qui recordo ill. interfuer. Libr. Intrac. fol. 343.

And the Sheriff must return the names of the four Knights of the County, ut supra. Liber Intrac.

*Falso Judicio.*

Virtute istius brevis (assumptis mecum, P. M. quatuor legalibus milit' de Com' meo) in propria persona mea accessi ad curiam E. tent. apud N. (tali die & anno.) Et in plena curia ibidem ab A.B. &c. sectator. ejusdem curiæ, & R.H. Senesch' ibid', petij Recordum loquelæ q. est in ead' curia, per parvum breve Domini Regis de Recto, inter J.P. petent' & N.S. tenent. fieri, & mihi liber. Qui quidem Seneschallus, & Sectator' Recordum illud inde mihi liberare noluerunt, ob quod execut' dicti brevis minime facere potui, 11 H. 4. fol. 23.

This Writ lieth where false Judgment is given in the County (02 other Court Baron) and is to cause the Record to come before the Justices in Banco, &c. And therefore upon this Writ, the Sheriff is to repair to the Lords Court, 02 Hundred Court, &c. in the Writ mentioned, and is there to require of the Lord and Steward to have the sight of the Plea (02 of the Suit there depending) in the Writ also mentioned; And in full Court (before the Suitors) the Sheriff is to Record the same Plea, and then he is to return the same; and withal he is to warn 02 Return the Defendant to be before the Justices at the day prefixed, &c. See hic cap. 48.

Also upon the Writ of false Judgment, which is an Accedas ad *Fitz. 18. c.* curiam, the Sheriff must take with him four men; but it is not needful that they be Knights, Fitz. 18. c.

This Writ must be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the same Court, ibid.

In this Writ, it is a good return for the Sheriff to say, that after the receipt of the Writ, and before the return thereof, no Court was holden, so as he could not execute the Writ, &c. *Fitz. Retor. 21.* Also it is a good return (in the Writ) that the Sheriff hath required the Lord to hold his Court, and the Lord would not, so as he could not execute the Writ; and upon such return the Justices will award a Distress.

stress directed to the Sheriff, to distrain the Lord to hold his Court, Fitz. Retor. 21. Vide Libr. Intr. fol. 342.

The Sheriff returned that he had been at the Court, and that the Suitoꝝ would not Record the Plea, Fitz. faux Judgment 6. 8. 21. Proceſs 167. & Dyer 262.

Upon this Writ, although the Plaint oꝝ Suit be determined, yet the Sheriff is to make Execution of the Writ, ſc. he is to require the sight of the Plea, and to Record the same, and to return the same Record together with the Writ, Vide Dyer 268.

The Sheriff returned that he came to the Court to Record the Plea, and that the Suitoꝝ said that there was no such Plea, &c. Fitz. faux Judgment 13. Nat. Br. 16.

Oꝝ that the Suitoꝝ would not deliver him any Record, Fitz. Proceſs 128.

Oꝝ that the Suitoꝝ would not deliver him the Record, noꝝ suffer him to have it, Fitz. Recordar. 7. Libr. & Intr. 342, 343.

Fitz. 19. c.

In this Writ, if the Sheriff returneth, *Quod breve adeo tarde venit; quod executionem ejusdem facere non potuit*, this is a good return: And upon such return the party may have a Sicut alias directed to the Sheriff; and if the Sheriff doth not return this at the day, then shall the party have a Pluries directed to the same Sheriff, &c. Libr. Intrac. fol. 345. d. Tarde.

Vid. Fitz. 19. c.

Also in this Writ, if the Sheriff returneth that he went to the said Court of &c. and there prayed the Lord to hold his Court, that so he might make execution of this Writ, and that the Lord refused to hold his Court, &c. by reason whereof he could not do execution of this Writ, then a Distress shall be directed to the Sheriff out of the Court of Common-Pleas, commanding him to distrain the Lord to hold his Court at a certain day to be limited him by the Sheriff, and that the Sheriff taking with him four discreet knights, &c. of the County, &c. shall come to the same Court, &c. and that he return the same such a day, &c. and also that he have then and there the said Record, &c. and that he Summon the aforesaid Lord that he be there to hear the same Record, &c.

Upon a Writ of false Judgment (of a Judgment given in the Court at Godmanchester, which is a parcel of the Duchy of Lancaster) the Sheriff came thither to the Court; but the Suitoꝝ there refused to make a Record, but would thereof deliberate, &c. And in the mean time an Injunction was sued out of the Duchy, directed to the Plaintiff, his Councelloꝝ and Attorneys, and also to the Sheriff, to surcease to perſue, oꝝ make Execution, oꝝ Return of the Writ, Sub poena 200 l. And yet the Sheriff (notwithstanding) returned the Writ, ut supra; and in his Return he named (by their proper names) all the Suitoꝝ which refused to make the Record (who were seven in number. And upon this Return a Distress' Seſſator' issued out against those seven only, &c. And those Suitoꝝ were amerced by the Justices, &c. Dyer 262, 263.

Also upon a Writ of false Judgment, directed to the Sheriff of, &c. the Sheriff returned, that the Steward, the Bayliff, and four Suitoꝝ (naming all their names) were present in the Court when the Sheriff came to return the Plea, and required the sight oꝝ view thereof, and that the Steward and the Bayliff denied him, &c. (Omitting the Suitoꝝ: ) *Et sur ceo un Distress fuit agard al vic tantum*

vers les 4. Suteurs, ou en un Summons vers le party, &c. Et apres le brief fuit retorne servie, Et le Record port eins per les 4. Suteurs tantum, al Common-Pleas, & enter, sed Nihil amplius actum erat, Dyer 268.

Nota que le brief de faux Judgment serra re. fa. lo. que fuit in eadem Curia, & nemy que est in eadem Cur. Car loquela est determin sur le Judgment, Dyer ibid.

Sur brief de faux Judgment, sur faux Judgment, &c. done in Court, le Vic. doit recorder ceo, & d'aver in Banco, Finch 117.

Et nota que cest brief de faux Judgment extend auxi bien as brief du Droit queux sont pleadables in County, ou in Court Baron; Come la ou le parol est en County ou in Court Baron, sans brief, N. Br. 60.

Auxi ceo brief gist, lou faux judgment est done per le Vic. in son County Court sur un Justicies direct a luy a tener plea, ibid.

Mes pur faux Judgment done in le County Court, Vide le Retorne de ceo, Br. hic tit. Recordare, &c. cap. 72.

## C A P. LXI.

## Retorne de fieri feci sur Fieri fac'.

*Fieri fac'.*

**V**irtute istius brevis mihi directi, fieri feci de bonis & catallis infra-nominat' J. H. quandam dimissionem & concessionem eidem, J. H. per quendam T. G. gen. per Indentur' suam fact'. Vide hic antea. c. 28. *that this recital is needless*, (pro termino 31 annor' incipiend' a primo die Julij anno, &c. infra-script' prout per Indenturam illam geren' dat' eisdem die & anno plenius liquet & apparet) de & in uno messuagio sive firma cum pertinentiis scituat' jacen' & existent' in L. in Parochia de F. infra ballivam meam, vocat' sive cog' per nomen de B. simul cum omnibus & singulis terr' pratis, pascuis, boscis, subboscis, aquis & pasturis, cum omnibus suis pertinentiis, scituat' jacen' & existent' infra villam, parochiam & Campos de F. prad' & O. scilicet in balliva mea. Et prad' dimissionem, ac omne & totum jus stat' titulum termin' anno' possessionem & demand' quæ prad' J. H. modo habet, de & in prad' præmissis, virtute sive vigore ejusdem dimissionis & concessionis, aut aliter, vendition' expolui & vendidi cuidam P. H. gen' pro lum' 76 l. 13 s. 4 d. Ac etiam fieri feci de aliis bonis & catallis prad' J. H. ad valent' 65 l. 6 s. 8 d. quas quidem denariorum summas, sic in forma prad. per me levat', in toto sc. attingunt ad summam 132 l. 12 d. Et easdem summas cofam Domino Rege ad diem & locum infracontent' parat' habeo ad reddend' infranom'. E. P. & J. uxori ejus in parte satisfact' dampnorum infra-script' prout per breve istud interius mihi præcipitur. Et q. prad' J. H. nulla alia sive plura bona aut catal' in balliva mea habuit, unde resid' prad' debet' 145 l. 6 s. 2 d. fieri possum secundum exigent' hujus brevis.

A. B. Ar. Vic.

*Aliter.*

Virtute istius brevis mihi directi fieri feci infra-script' 10 l. de bonis & catallis infra-script' R. W. Quas quidem 10 l. coram Justic' infra-script' ad diem & locum infracontent' parat' habeo, prout istud breve in se exigit & requirit.

Virtute

Virtute istius brevis mihi directi de bonis & catallis infranom' T. E. *Aliter.*  
 fieri feci debitum & dampna infrascript' & denarios illos habeo coram  
 Domino Rege infrascript' ad diem & locum infracont' prout interius  
 mihi præcipitur.

Virtute, &c. fieri feci C s. de bon. & catall' infranominat' W. H. Quos *Aliter sur de.*  
 quidem C s. coram Justic' infrascript' ad diem & locum infracontent' *vast.*  
 parat' habeo prout, &c. Et ulterius eisdem Justic' certifico q. executor.  
 infrascript' bona & catalla infranominat' W. H. testat' penit' devastaver'  
 sic quod summam x. marcarum infrascript. nec aliquam inde parcellam  
 fieri facere non possum.

In an Action of Debt against Executors who pleaded that they  
 had full administration, it was found by the Jury that they had as-  
 sets remaining. whereupon a Fieri fac. was awarded to the Sheriff,  
 &c. And the Sheriff thereupon returned, quod mandavi ballivo li-  
 bertatis, &c. Qui mihi dedit responsum, quod executores non habent aliqua  
 bona testatoris, which return being contrary to the verdict of the  
 Jury, was holden not to be good, and the Sheriff was therefore  
 amerced; for he should or might have returned quod Elongaver or  
 Devastaver. 5 H. 7. fol. 27. Fitz. Ret. 35.

So if the Executors have wasted the goods of the Testator, or  
 have imployed the same to their own use, the Sheriff upon the  
 Fieri fac. may return a Devastaverunt.

But if the Executors have sold the Goods of the Testator, and  
 taken Money (or other Goods) for the same, the Sheriff upon the  
 Fieri fac. is to take other Goods of the Executors, to the value of  
 the Goods so sold, 14 H. 4. Fitz. Ret. 55.

If all the Executors, save one, have nothing of the Testator's, yet  
 upon the Fieri fac. the Sheriff is to make Execution of that which  
 is in the hands of that one Executor, *ibid.*

The Sheriff returned that the Executors Non habent aliqua bona  
 testatoris in balliva sua Administ. post receptionem brevis, Fitz. Exec. 9.

The Sheriff returned that the Executors had no Goods of the  
 Defendant, Fitz. Exec. 73.

But if the Sheriff (upon a Fieri fac. against Executors) returneth  
 that the Executors had sold the Goods; or that all the Executors  
 but one had nothing: These are no Goods returns: See hic c. 36.

Upon a Fieri fac. for damages recovered, the Sheriff returned that  
 after the Recovery, and before that this Writ came to him, the De-  
 fendant (in the original) by Covin had given all his Goods to divers  
 persons unknown, to the intent to defraud the Plaintiff of his Re-  
 covery, this return was holden not to be good, and the Sheriff was  
 amerced for the same, for that the Sheriff is to take knowledge what  
 things he may do by the Law; and this gift or alienation of the  
 Goods being void, the Sheriff ought to have made execution there-  
 of, notwithstanding such gift or alienation, 3 H. 6. Fitz. Ret. 5.

Where there be divers of one Name.

Justic' infrascr' certifico quod sunt diversæ personæ in Comitatu meo  
 Nominis & cognominis de J. S. viz. J. S. de B. J. S. de C. & J. S. de W. &  
 quod non continetur in isto brevi de cujus prædictor' J. S. bonis & ca-  
 catallis denar' infrascr' fieri facere. Ideo ad executionem istius brevis  
 procedere non potui.

Virtute, &c. fieri feci de bonis & catall' terr' & tenement' infranominat'  
 R. B. ad valenc' CC l. & illa de die in diem vendition' exposui, & inde *Aliter.*  
 vendidi

vendidi ad valenc. C. Quas quidem centum libr. ad diem & locum infracontent' parat' habeo, ad reddend' infranominat' J. W. prout interius mihi præcipitur, & resid' bonorum & catallorum præd' adhuc penes me remanent invendit' ob defect' emptorum.

A.B. Ar. Vic.

Virtute istius brevis, cepi bona & catalla A.W. infrasp' ad valenc' omnium denariorum infrascript'. Et illa venditioni exposui, ad quod nondum inveni emptores, Et ideo denarios infrasp' habere non possum ad diem & locum infracontent' prout mihi præcipitur.

Vide Dyer 98. *Sur Fieri fac' le Vic' retourne, quod cepit bona & Catalla Def. al' value del debt, & quod rem' in Custodia sua pro defectu emptorum; Et coment fuit objecti' que le execution ne fuit servie, ne les property del biens altred nient obstant le seisure, uncore sur ceo retourne, un brief de venditioni exponas fuit agard.*

*Sur Fieri fac' le Vic' retourne que il avoit mande al Bailly del Franch. &c. que luy respond' quod cepit bona, &c. ad quod non invenit emptores, Fitz. Execution 101.*

Aliter.

Virtute, &c. cepi bona & catall' infrascript' A.W. ad valentiam 4l. de infrascript' Octo libris, quæ bona & catalla penes me remanent invendita pro defectu emptorum, quodque prædict' A. W. nulla alia neque plura bona seu catalla, nec aliqua terr' seu tenement' habet in balliva mea unde residuum prædict' octo librar', seu aliquam inde parcellam ad præsens fieri facere possum.

Aliter.

Adhuc illa bona & catalla, quæ nuper de bonis & catall', firmat' occupat' & tenement. manerij de W. ad valentiam xl. in manus Domini Regis cepi, pro defectu emptorum remanent invendita. Sed de die in diem venditioni expon' & de denariis inde provenient' quam citius poterō, vobis respondebo.

Aliter.

Virtute, &c. vendidi bona & catalla infrascripta per me prius capta, Ac etiam fieri feci de bonis & catallis R. S. infranominati residuum debiti infracontenti, Ita quod omnes denarios illos paratos habeo coram Domino Rege ad diem & locum infracontent' infranominat. H.W. solvend' prout interius mihi præcipitur.

Superfed.

Quod fieri faciend' denarios infrascript' virtute cujusdam brevis Domini Regis de Superfed' mihi directi omnino superfed' quod quidem breve de Superfed' huic brevi annex' vobis mitto; Et ulterius certifico, Vide Dyer q. dictus, J. C. non aliqua alia vel plura bona seu catalla, terras seu p. tenementa in eadem balliva mea habet, unde denarii aliqui ad præsens levare possum, &c.

Upon a Fieri fac. for the Debt, and a Capias ad satisfac' for the damages, the Sheriff returned, quod nulla habent bona neque catalla in balliva mea, unde infrascript' 15 l. (ou debit' & dampna) aut aliquam inde parcell' fieri facere possum, Nec sunt invent' in eadem' Vide Li-brum Intr. tit. Error in exception, div. 1.

Upon a Fieri fac' the Sheriff returneth quod nihil habet, this is not good, without saying further, nec habuit post receptionem brevis, 39 H.6. Fitz. Ret. 30.

Aliter

*Aliter sur nihil habet.*

Nihil

**I**nfranomatus R. B. Miles nulla habet bona seu catalla, terr. aut tenementa in balliva mea unde denar. infra spec. fieri facere possum, prout interius mihi præcipitur.

*Aliter.**A.B. Ar. Vic.*

Infranom. R. B. nulla habet bona, &c. de quibus denarios infra spec. aut aliquam inde parcellam possum levare, prout interius mihi præcipitur.

Infranom. R. B. Nihil habet in balliva mea, unde debitum & dampna infra script. aut aliquem inde denarium fieri facere possum, secundum exigenciam hujus brevis.

**Note**, that upon a Fieri fac. if it be duly executed, and the Plaintiff satisfied, then the Sheriff needeth not to return the Writ. See hic c. 38.

Also upon a Fieri fac. the Sheriff may sell a Lease for years, and yet never make any mention thereof in his return, but to return generally, Quod fieri fecit de bonis & catallis, &c. Co. 4. 74. b.

Upon a Fieri fac. against J. S. who dieth (before execution) the Sheriff may levy the execution of the Executors or Administrators, JJS. Dyer 76.

A.M. Infra scriptus nulla habet bona seu catalla infra ballivam meam de quibus executionem istius brevis facere possum, prout, &c. nec aliqua terr. seu tenementa habuit infra eandem quinto die J. nec unquam potest, prout patet in quadam schedula huic brevi consut.

*Aliter.*

And yet where there is found Assets by a Jury, there, upon a Fieri fac. directed to the Sheriff, he cannot return a Nihil habet, &c. contrary to the Verdict of the Jury: See hic fol. præced.

And if the Sheriff, upon a Fieri fac. shall return, quod non habet aliqua bona in balliva sua, &c. prout ei aliquo modo constare poterit, **This is not good**; But he must return directly quod nihil habet, or non habet aliqua bona in balliva sua, 9 H. 6. Fitz. Ret. 9. Br. Ret.

*Restitutio sur Fieri fac.*

**J**G. & alij infranominat. nihil habent, nec eorum aliquis nihil habet in balliva mea; unde restitutio bonorum & catal. infra script. infranominat. W. M. habere facere potui, Nec non 24 l. infra script. eidem W. M. Fieri facere potui prout, &c.

*Retorne de Formedon.*

Plegij de prosequendo {  
J. D.  
R. R.

Summonitores {  
J. H.  
T. S.

*A.B. Ar. Vic.*

*Sur un Formed. le Vic. poet retorne tarde, &c. Mes dunque si le demand. sur un Alias summons, la doient estre 9 retornes perenter le tesse & le retorne de ceo, Dyer 252.*

**In**

Formedon.

In a Formedon, the Sheriff returneth, quod nihil habet, &c. nec est inventus, &c. this is no good return; for in this Writ the Sheriff may summon him in (or upon) the Land demanded, whether he be tenant thereof or no.

Br. 67.

Forrest.

Quant le Roy voile faire un Forrest, un brief issuer. al. Vic. de mesme le County ou le Forrest serra, de enquirir quel lieu est necessary de faire Forrest; Et sur ceo le Vic. prender enquest, & enquirir del content de lieu, & del bound, & mesme le bounds mitter a un certainty; & tout cel il doit retorner in le Chancery. Et quant le Roy est de cel ascertainé per tiel matter de record, le Roy maunder al Vic. per ses Letters Patents, que serra Proclamation que le lieu que il ad retorner serra en apres un Forrest, Crompt. author. des Courts 146.

## C A P. LXII.

*Retorne in Garranty del Charters.*

**I**n a Writ de Garranty de Charters, Nihil is a good return, 10 H.6. f.12. Fitz.Ret.12. Process 26.

Nota que le Process in ceo brief est Summons, Attachment, & Distress infinite tanque le party veigne. N. Br. 156. Et sur chescun de eux le Vic. poet retorner come devant queux terres seront liable in cest brief, Vide Co.Lit.102.

*Retorne in brief de Gard.*

Here the Defendant is to be summoned, Fitz. Procl. 5.

In this Writ, Nihil may also be returned (upon the Defendants.) Br.Ret.101. Fitz. Process 26. 47. Procla.5.

The Sheriff may return that the Def. is in another County, Fitz. Process 164.

The Sheriff returned that he could not make Proclamation, for that the Writ came so late, Fitz. Procla. 1.

Upon the Distress with Proclamation the Sheriff returned that as to the Distress Mandavit ballivo libertatis; and as to the Proclamation that he made it himself; this is not good, Vide 21 H. 7. 14. Mes Fitz. Ret. 41. contra.

*Retorne de Distress, & del Proclam. in brief de droit de Gard.*

Quod præd. def. district. sunt per catalla ad valenc. 2 s. Et manucapt. per J.M. & R.F. Et ulterius quod in pleno Comitatu suo tent. apud C. (tali die & Anno) Et sic ad duos Comitatus. C. tunc prox. precedent apud castrum C. præd. tent. Proclamari fecit, Quod præd. Def. essent coram Justic. &c. ad respondend. prout breve illud exigit & requirit. Libr. Inter. fol. 388. b.

*Retorne*

## Retorne de Grand Cape.

Ceo Grand Cape issuer quant ascun action real est port, & le Tenant ne appear, mes fais default al primer summons: Et pur cel default le Tenant, perder le ter. &c. Termis del Ley. Vide Fitz. 86. & Old. Nat. 177. Br. 177.

Virtute istius brevis 10 die M. anno infra script' per visum R. H. & T. H. proborum & legalium hominum de com' meo, cepi in manus Domini Regis, terras infra script' prout interius mihi præcipitur. Grand Cape.

Summon, J. D. R. F.

Infra libertatem.

And if this Writ be directed to the Sheriff, and the place where it ought to be executed be within a Franchise, which hath full return of all Writs, then it must be thus.

Executio istius brevis patet in quadam scedula huic brevi annex.

Ego A. B. Vic' Com' Cantab' Mandavi J. W. ballivo libertatis de R. in Com' præd' qui habet plenum return' omnium brevium, & executionem eorundem infra libertatem prædict' in Com' præd'. Et ad quem execut' istius brevis totaliter pertinet faciend' pro eo quo dicta executio inde alibi in balliva mea extra dictam libertatem fieri non potuit, qui mihi sic responder, &c. Schedula.

Virtute, &c. cepi in manus Domini Regis per visum R. H. & T. H. probor' & legalium homin' de Com' meo, de terris & tenement' J. M. infranominat' ad valenc' \* unius Messuagij, &c. ut in brevi infra content' (tali die & anno) juxta formam hujus brevis (vel, prout interius mihi præcipitur, vel prout istud breve in se exigit & requirit) Aliter.

vel \* Tertiam partem messuagiorum, gardinorum, & cæterorum præmissorum, prout interius mihi præcipitur. Aliter.

Virtute istius brevis cepi in manus Domini Regis tali die & anno, &c. Omn' terras & tenementa, redditus & servic' cum pertin' suis, in breve isto specificat' secundum formam hujus brevis, per visum T. W. B. B. & F. C. proborum & legalium hominum de balliva mea, prout interius mihi præcipitur. Aliter.

Note, That in this Writ de Grand Cape, the Sheriff hath two things in command, sc. de prender le terr. in mains le Roy, & de Summoner le tenant, Fitz. Amerc. 1. And yet by some upon these words Cape in manum nostram, are but form and void, and the Sheriff ought not to seize the Lands into the King's hands by force thereof, Kiel. 117. ramen vide hic c. 11. contra sc. que le Vic. seiser le ter. & serra accomplable pur les issues del dit ter. del temps del default tanque judgment pur le demandant, vide Stamf. Prerog. 84. & Finch. 86. b. accordant.

Upon the Grand Cape, the Sheriff must summon the Tenant to answer to his default, and further to answer to the demand.

Also the Sheriff ought to return the names of the Summoners and Depors, Br. Ret. 86. N. br. 178.

Upon this Writ the Sheriff returneth that the party hath nothing, per quod summoniri potest; this is a good Return, Fitz. Ret. 10. Br. Ret. 7. Nihil.

Upon this Writ, the Sheriff returneth quod nullus venit ex parte quer. ad ostendend. mihi terr. Et ideo non potui terr. Capere, &c. Quare whether this be a good Return: But if the same Sheriff made the summons before, then he cannot after make this Return, 12 H. 4. & 13 H. 4. Fitz. Ret. 54 & 103.

Upon this Writ the Sheriff may return that there is no such Town, &c. Fitz. Sav. def. 73.

Now this cape in manus seemeth only upon the default of the Tenant.

Note, That the Grand Cape must be served (sc. the Lands must be seized into the King's hands) fifteen days befoze the day of the return, sc. befoze the primodie, &c. Br. Grand Cape 29.

Upon the Grand Cape, the Sheriff must return the Summoners and Depozs, Kirch. Ret. 44.

The Sheriff may Return Mandavi ballivo libertatis, &c. Libr. Intr. fol. 399. b.

He may return Virtute, &c. 3 die & Anno, &c. Cepi in manum Domini Regis duos solidat. reddit. infrascript. per visum R. & J. legalium hominum com. præd. prout interius mihi præcipitur. Ibid.

Sur Grand Cape le Tenant poet s'aver son default, adire que il ne fuit summon solonque le Ley; Ou que il fuit en prison; ou disturbe per certain inun-dation de ewe, &c. Finch. 86.

Le Grand Cape issuer (in Real Præcipes, lou un Freehold est d'estre recover) sur default a le summons retourne, & devant appearance.

Le Petit Cape issuer (in Præcipe lou Franktenement est d'estre recover) sur default apres appearance, Fitz. 87. Old Na. Br. 178.

Le Grand Cape, & Petit Cape, semble en tous choses d'estre de mesme le natures avant que en Petit Cape le Tenant est de responder al son default tan-tum, lou en Grand Cape il est de responder al demand auxi, Fitz. 438.

Mes le Petit Cape issuer lou in plea de ter. le tenant est summon, & ap-pear, & apres il fist default al auser jour done (sc. apres plea, issue, ou de-murrer.) Fitz. 87. Old Na. Br. 178.

Sic nota que le Grand Cape issuer sur default devant appearance: Et le Petit Cape issuer sur default apres appearance, N. Br. 178.

### C A P. LXIII.

*Retorn' del Habeas Corpus, & Corpus cum Causa: Vide hic antea, Corpus cum causa, cap. 55.*

*Habeas corpus.*

*Languidus.*

*Aliter.  
Languidus.*

**V**irtute istius brevis vobis certifico, quod ante adventum istius bre-vis virtute alterius brevis mihi prius directi, A. B. infrascriptus in prisione Castri Domini Regis de Cantabr. extit. ac ibidem languidus & infirmus jacebat, & in eadem prisione adhuc languidus & infirmus jacet, ita quod ipsum ob mortis metum curare non possum; ideo corpus dicti A. B. ad diem infracontent' habere non possum, &c. Libr. Intr. 190. c.

Justic' Domini Regis certifico, quod infranominat. J. B. adeo langui-dus in prisione Domini Regis Castri sui Cantabr. in Comit. C. variis in-firmitat. detent. ita quod propter corporis sui debilitat. & mortis peri-culum, ipsum tute remove non possum. Ideo corpus ejus coram Justic. infrascript. ad diem & locum infracontent. ad præsens habere non possum, juxta formam hujus brevis. Vide Libr. Intr. fol. 400. d.

*A. B. Ar' Vic'.*

*Habeas corpus est pur home endite de trespass devant Justices de Peace (ou in ascun Court de ascun Franchise) & imprison, de remover luy in Bank le Roy, Fitz. 250. h.*

*Corpus*

*Corpus cum causa est per hominem condemnatum in alicuius curia per debet & son corpus mise in execution, de remover luy, sc. son corps, & le record, Fitz. 251.e.*

No Writ of Habeas Corpus shall be granted to remove any Prisoner out of any Gaol, except the same Writ be signed with the proper hand of the Chief Justice, or (in his absence) of one of the Justices of the Court, out of which the same Writ shall be awarded. 1 & 2 Ph. & Ma. cap. 14.

By the new Act of Parliament made in 30 Car. 2. a Judge at his Chamber may grant a Habeas Corpus Returnable immediate in Vacation time, except it be where the party is committed for Treason or Felony.

Upon a Habeas Corpus or Corpus cum Causa, it is a good Return, that the party is dead, Br. Ret. 125.

Domino Regi certifico, quod J. S. infra script. non detent. existit in prisione sub cust. mea; Nec fuit die receptionis huius brevis; Nec aliqua causa detentionis ipsius J. penes me residet; Et ideo corpus ipsius J. & causam detenc. illius coram Dom. Rege ad diem & locum infra content. habere non possum, prout interius mihi præcipitur, Libr. Intr. fol. 472.d.

*In these Writs there be divers other manner of Returns, and divers of them are in manner following.*

**V**irtute istius brevis vobis certifico, quod ante adventum istius brevis *Aliter. In Prisona.* W. B. infra scribit. captus fuit in alio loco, & prisione Domini Regis de N. commissus, virtute cuiusdam alterius brevis mihi prius directi, cuius transcriptum vobis mitto huic brevi confut. Attamen corpus ipsius W. coram vobis habeo ad diem & locum infra content. prout mihi interius præcipitur, &c.

Nos Vic. præd. vobis significamus, quod ante adventum istius brevis *For Trespass.* Domini Regis nobis directi, & huic brevi confut. J. F. de T. in dicto brevi nominat. captus fuit in tali loco, & prisione Domini Regis de C. commissus, pro 20 l. de dampnis adjudicat. T. C. de N. in placito trans. in Cur. Dom. Regis in dicta Civitate C. coram nobis dict. Vic. tent. Et similiter idem Jo. detentus est in prisione præd. ad sectam W. S. in placito trans. coram nobis dict. Vic. in Cur. præd. habita & prosecut. Attamen corpus, &c. (ut in prox. returna ante, &c.)

Virtute istius brevis vobis significo, quod ante advent. ejusdem brevis *For Felony.* Domini Regis R. A. in dicto brevi nominat. capt. fuit in L. & prisione Domini Regis de C. pro suspicionem communis latronis commiss. Et ulterius idem R. detentus fuit in eadem prisione, pro eo quod ipse pro diversis felonis per ipsum factis & perpetrat. apud D. in Hundred. de A. indictatus est, ut informatus sum; Et alia vice captus armatus apud J. in Com. (tali) duct. fuit prisione Domini Regis, dictusq; A. eandem prisionem Domini Regis felonice fregit & ab ea recessit ut dicitur, Attamen corpus ipsius R. (ut supra, &c.)

Virtute, &c. vobis certifico quod ante adventum ejusdem brevis A. W. *Excom.* infranomin. per censuram Ecclesiasticam, in Ecclesia de N. (tali die & anno, &c.) propter suam contumac. (vel similia) excommunicatus existit; ipseq; A. per ordinarios Sancti Martini Ecclesie institut. in præmiss. adhuc restat in eadem Cur. Excommunicatus; Et hæc est causa captionis & detentionis præd. A. attamen corpus ipsius A. W. coram Domino Rege ad diem & locum infra content. ubicunq; fuerit, habeo parat. prout, &c.

Ante advent. istius brevis C. D. infra script. fuit in tali loco & prisione. *Counterfeit. moneta.* Dom. Regis de R. commiss. pro suspicionem contrafaction' monetæ Regis, & ea de causa, & non alia, in eadem prisione detentus est. Attamen ipsum C. D. coram vobis, ad diem & locum infra content. parat. habeo, prout mihi interius præcipit.

*Murder.*

A. B. captus fuit apud D. in Com. E. per H. S. seneschallum T. F. & cor. præfat. seneschall. Hundred. tent. &c. indictatus fuit pro morte J. T. per præd' B. occisum, & per præf. seneschall. missus fuit prisonæ Domini Regis de R. quod quidem indictment. reman. cum præf. seneschal. attamen corpus ipsius B. coram Dom. Rege in Cancell. sua ad diem in brevi isto content. ubicunque fuer. &c. habeo parat. prout istud breve in se exigit & requirit, &c.

Sequuntur hic diversæ causæ super return. hujus brevis corpus cum causa inferend', &c.

*Si necesse fuerit causa captionis, & detention. A. B. de D. infra scrip. hic subsequitur.*

*Felonies.*

**A** De B. captus est pro suspitione latrocinij, & quia non potest invenire sufficient. secur. ad Legem Domini Regis expectand. prisonæ Domini Regis de B. commiss. fuit, & ea de causa detinetur: Attamen corpus dicti A. coram vobis, &c.

*Account.*

W. D. infra scriptus captus fuit ante adventum istius brevis (in tali loco) & in prisona Domini Regis ibidem sub mea custod. detent. prætextu cujusdam querelæ in curia Domini Regis ibid. coram me præf. Vic super ipsum per nomen W. &c. ad sectam (talis) in placito compot. affirmat. unde in eadem cur. coram me dict. Vic. partes præd. placita ver. & posuer. se super Jurat. patriæ in eadem cur. Et postea dictus W. de D. super suffic. manucap. ad respond. præfat. (tali) de placito præd. dimiss. fuit ad largum à prisona prædict. Et quia dictus W. post manucapt. prædict. ad judicium non reven. custod. corpus ejus ad diem & locum infracontent. habere non possum.

*Aliter.*

Ante adventum istius brevis A. H. & S. Auditores compotorum W. de B. mihi per indent. deliberaver. corpus R. S. infra script. salvo & secure custodiend. quousq; satisfec. W. de B. de 200 l. arrer. super finem compoti R. S. per dictos Auditores invent. &c. Et hæc est causa captionis & detention. ipsius R. S. Attamen corpus, &c.

*Treason.*

Infra script. J. C. appellatus fuit apud C. coram (tali Judice) per W. probatorem (tali die & anno) pro diversis prodicionibus per ipsum perpetratis, & ex illa causa fuit in C. & commissus prison. Dom. Regis de N. Attamen corpus, &c. ad diem & locum infracontent. parat. habeo, prout interius mihi præcipitur, &c.

*Utlag'.*

A. filius A. de B. per nomen A. de B. ante adventum istius brevis uclagatus fuit de felon. coram P. S. R. T. & soc. suis Justic. Domini Regis ad pacem (in tali libertat.) vel in Com. conservand. Et postea per præceptum dictorum Justic. mihi modo direct. idem A. capt. fuit apud D. & ea de causa commissus fuit prisonæ Domini Regis de C. attamen, &c.

*Supplicavit.*

Virtute istius brevis vobis certifico, quod A. W. infra script. capt. fuit virtute cujusdam alter. brevis Domini Regis vocat. Supplicavit ad sectam D. P. diu ante adventum istius brevis, & commissus prisonæ Dom. Regis de C. pro eo quod non potuit suffic. invenire securitatem de pace gerend. erga dict. D. & hac de causa & non alia, in dict. prisona detinetur, attamen, &c.

Ante

Ante adventum istius brevis, virtute cujusdam alterius brevis voc' Cap' <sup>Cap. Utlag.</sup> utlag' mihi directi, cujus transcript. vobis mitto presentibus annex: Cepis C. D. infranom' ipsumq; prison' Dom' Regis de C. commisi, & adhuc in eadem detinetur prison' causa premiss. attamen corpus, &c. Libr. Intr. fol. 457. d.

Ante adventum istius brevis, A.H. & S. auditores Compotorum W. B. mihi per Indentur' deliber' Corpus R.S. infra script' salvo & secure custodiendi. quousq; satisfec' prefato W.B. de 200 l. arrerag' super fine Compoti. R. S. per dictos Auditores invent. &c. Et hæc est causa captionis & detentionis ipsius R. S. Attamen corpus, &c. <sup>Accomp.</sup>

*Other special Returns upon a Habeas Corpus.*

**E**GO A. B. Armig' Vic' Com' Cant' Domino Regi ad diem & locum in brevi huic scedul' annex' content' certifico, quod ante adventum ejusdem brevis A. O. in dict' brevi nominat' capt' fuit infra Com' præd' <sup>Captus ad satisfac.</sup> per W. V. Armig' nuper Vic' comit' præd' & in prison' dicti Domini Regis Castri sui Cantabr' in Comit' præd' salvo custod' ejusdem nuper Vicecom' detent', virtute cujusdam brevis dicti Domini Regis de capiend' versus dict' A. teste apud Westmonasterium nono die Octo' anno Regni, &c. retorn' coram Justic' dicti Dom' Regis apud Westmonasterium à die Sancti Martini in 15 dies tunc prox' sequen' ad satisfaciend' T.D. gener', tam de quodam debitor' de 40 l. quam de 30 s. pro dampnis, unde idem A. coram præfat' Justic' apud Westm' convictus fuit; cujus quidem corpus, sic capt' & in prisona præd' sub custod. dicti nuper vicecom' ea occasione existent' detent', ego præf. A.B. nunc vicecom' Com' præd' recepi de præd' nuper Vic' in ejus exitu ab officio suo, & corpus ejus per me de præf. nuper vic' sic recept' in prisona præd' salvo custod' feci, quousq; postea, scilicet decimo die Decemb' anno, &c. recepi quoddam breve dicti Domini Regis de Superfed' mihi directi, cujus quidem brevis tenor <sup>Superfed.</sup> sequitur in hæc verba *fac. &c.* Virtute cujus quidem brevis de Superfed' pro eo quod non fuit aliqua alia causa detentionis præd' A. dict' A. ad largum ire permisi, dict' breve de capiend' ad satisfac' in aliquo non obstante, prout per dict' breve de Superfed' mihi inde præcipitur. Ideo corpus præd' A. coram præf. Domino Rege ad diem & locum in dicto brevi huic scedul' annex' content', parat' habere non possum, prout idem breve in se exigit & requirit.

A. B. Armig' Vic'.

Ego A.B. Armig' Vic' Com' Cant' Dom' Regi certifico quod corpus infranom' R.T. jacet sub salva custod' mea in executione ad sectam T. B. pro 100 l. ret' coram Justic' Dom' Regis apud Westm' à die Sancti Mich' in unum mes. Ideo corpus ejus ad diem & locum infra content' habere non possum, prout interius mihi præcipitur. <sup>Captus in executione.</sup>

A. B. Ar' Vic'.

And yet if a man be condemned in any Court, and his body taken in execution, and then he procures any Writ to the Sheriff to remove his body, &c. the Sheriff upon such Writ, ought not only to return the truth, or cause of the Condemnation, &c. that his prisoner is condemned by judgment, or in execution, that so at the last the prisoner may be remanded, for he shall not be let to Chai[n]pise, but be sent back

to Prison, there to remain until he hath satisfied the Plaintiff, Fitz. 251. e. & (Stat. 2 H. 5. c. 2.) But also the Sheriff ought to bring in the Body at the day, and according to the Writ.

*Impris. per  
warr. del Just.  
de Peace.*

Ante adventum istius brevis mihi directi infranominat. H. H. commissus fuit Gaolæ Dom. Regis Castri sui Cantabr. in Com. infrascript. sub custod. mea virtute cuiusdam Warr. F.C. & J.W. duorum Justic. dicti Dom. Regis ad pacem in Com. præd. conservand. necnon ad divers. felon. transgr. & al. malefact. in eodem com. perpetrat. audiend. & terminand. assign. geren. dar. tertio die A. anno infrascript. pro quibusdam transgression. & contempt. contra formam Statuti pro punitione Vagabond. & pro pauper. & impotent. edit. & hæc est causa captionis & detent. ipsius H. Corpus tamen præd. H. ad diem & locum infracont. parat. habeo, prout interius mihi præcipitur.

*A.B. Ar. Vic.*

*Captus per dar.  
Vic.*

Ego A.B. Armig. Vic. Com. C. Justic. infrascript. certifico, quod corpora R.T. & cæter. defend. infranominat. per me non capt. fuer. sed per W.V. Armig. nuper vicec. Com. præd. prædecess. meum, & mihi per ipsum minime deliberat. in exit. ab officio suo. Ideo corpor. eorum coram Justic. infrascript. ad diem & locum infra content. habere non possum, prout interius mihi præcipitur.

*A. B. Ar. Vic.*

*Mandavi balliv.*

Virtute istius brevis mihi directi mandavi ballivo libertatis T. Episcopi E. ad capiend. & arrestand. infranominat. J.S. in forma infrascript. qui plenum habet retorn. omnium brevium & præceptor. & executionem eorundem infra libertatem præd. Ac quod nulla execut. istius brevis per me fieri potest infra eandem libertatem; Qui quidem ballivus nullum mihi adhuc dedit responsum; vel sic, qui mihi respondit quod infranominat. J. S. non est invent. in balliva sua; vel sic, quod cepit corpus infranominat. J. S. cuius quidem corpus ad diem & locum infracontent. parat. habet ad fac. ea omnia quæ istud breve in se exigit & requirit.

*Habeas corpor.  
Jurator.*

Habeas corpor. Jurator. Vide hic Retorn. de Venire facias.

*Retorne de Habere fac. Seisinam.*

*Habere fac.  
seisinam.*

Virtute istius brevis mihi directi, Justic. infrascript. certifico, quod tali die & anno infrascript. habere feci A. G. plenam seisinam de uno Messuag. cum pertin. in S. infraspec. in omnibus prout istud breve in se exigit & requirit.

**Note, That in a Habere fac. seisinam, the Garnishment must be upon the Land, 22 H. 6. 38.**

**And the Sheriff in Cases where Land is recovered, is to put the party in possession and seisin by a Twig, Bough, Clod, or the like, Br. Rediss. 5. & Perk. 42.**

Or if the Recovery be of an House, then the Sheriff may put the party (who hath recovered the House) in Seisin or possession thereof, by delivering to him the Ring of the Dooz of the House, &c.

Or otherwise the Sheriff may open to him the Dooz of the House, and bid him to enter into the same House, and to take Seisin, or Possession thereof by force of the Recovery, &c. Perk 43.

And if the Recovery be of a Rent, the Sheriff may put the party (who hath recovered the Rent) in Seisin thereof, by the Cozn or Gals growing upon the Land, out of which the Rent is issuing: Or by the twig or bough of a Tree growing upon the same Land; or by Distrels of Cattel Levant, and Couchant upon the same Land; Or by a clod of the same Land. And this is a good seisin of the Rent, notwithstanding that the day of payment of the Rent be not then come.

*Mes le party ne poet chaser tiels avers ove luy hors de mesme le lieu,*  
Perk. 42.

Or a Rent recovered the Sheriff may deliver Seisin by Distrels, &c. Fitz. Assize 444 or may deliver Seisin by parol, or by any parcel of the Land, out of which the Return is issuing (Fitz. 179. h.) as by a twig, or clod, Br. Redif. 5. & Seisin 7. 14. 30.

Or by delivery of any thing upon the ground, Br. Seisin 14. Mez. ibid. è contra.

Virtute, &c. tali die & anno infrascript. habere & assignare feci infranom. A. G. plenariam seisinam, de Manerio & tenementis infrasp. *Aliter.*  
in loco convenienti, viz. de Manerio de F. 20 acr. terræ, 100 acr. prati, &c. cum pertinen. in F. &c. in Com. infrascript. secundum formam & effectum, &c.

Virtute istius brevis mihi directi 26 die O. anno infrascript. habere feci infranom, N.S. plenar. seisinam de & in tenementis infrasp. cum pertinen. prout interius mihi præcipitur. *Aliter.*

A.B. Ar<sup>o</sup> Vic.

*Nota que le Defendant apres Judgment poet enter ou distrein devant aucun seisin delivrer a luy per le Vic. sans brief de Habere facias Seisinam, sc. lou terre, Rent ou autre chose in certain est demand, Co. Lit. 34. b.*

The Sheriff returns, that he offered to the Demandant Seisin (by meets and bounds,) &c. and that he refused it; this is a good Return, Dyer 278.

But if the Sheriff returns that he offered Seisin to the Demandant, who refused it, *Nul alias habere fac. Seisinam serra grant,* Dyer ibid.

Upon an Habere fac. Seisinam, the Sheriff returned that none came to receive Seisin, &c. Fitz. Execut. 248.

The Sheriff returned, that the Sheriff himself was Tenant, and so he could not serve the Writ, &c. Br. Return. 46.

Br. Ret. 89. But in an Habere facias seisinam, it is no good return that there is no such Land, &c.

Neither is it any good Return, that another is Tenant of the Land by right: Or that he against whom the Recovery is had, hath nothing in the Land, or is not Tenant thereof; and that therefore he could not enter to make execution of the Writ, Co. 6. 52. & Plo. xel's Case, fol. 13, 14. & Fitz. Rotor. 91.

*Nota*

*Nota, que sur habere fac. seisinam direct al Vic. il doit execute le brief comment que in fait estranger soit seisi del terr. & nul de les parties al brief fuit unques seisi de ceo: Et tuel estranger ne punier le Vic. pur sesance le Commandement le Roy done per son brief, Plo. Manxel's Case, fol. 12. b. & Co. 6. 52.*

If a Man recover Lands in three Towns, and hath a Writ of Execution awarded to the Sheriff, the Sheriff may deliver him execution and possession of the Land in one Town, in the name of all the Land, and it is a good execution for all the Lands recovered in all the three several Towns, per Cur. in Communi Banco 31 Eliz.

Note, That upon an Habere fac. Seisinam, as also upon an Habere fac. possessionem, if the Sheriff shall duly execute the Writ, and that the Plaintiff or Demandant have his demand there, though the Sheriff returns not the Writ, it is not material, Hic cap. 38.

The Sheriff returned that he could not deliver the Seisin by reason of resistance, made by J. B. and other persons unknown, and was amerced for that he might have taken Poise Comitatus, Fitz. Execution 247. Vide 8 R. 2. Fitz. Suggestion 15. tiel return allow.

Upon the Habere fac. Seisinam, or Possessionem, the Sheriff may break open the House, to deliver seisin or possession, Co. 5. 91.

*Retorn' de habere fac. possession. cum Fieri fac'.*

*Habere fac.  
possess.*

Virtute istius brevis mihi direct. vicesimo quarto die Maij, anno infra script' habere feci infranominat' H. H. possessionem termini sui infra script' de tenementis infra script' cum pertinen'; ac etiam fieri feci de terris & catallis infranominat' W. W. xx s. parcel' dampnorum infra script' & denarios illos habeo coram Just' infra script' ad diem & locum infra content' ad reddend' præf. H. H. prout interius mihi præcipitur.

A. B. Ar. Vic.

*Aliter.*

Virtute, &c. Justic' Infra script' ad diem & locum infra content' certifico, quod tali die & anno, habere feci infra script' J. F. & M. uxori ejus, visum de Messuag', &c. infraspacificat' cum pertinen'. Et dixi A. B. C. D. E. F. G. H. quatuor milit' de com. meo (or, ex illis) qui visui ill' interfuer' quod sint coram Justic' prædict' ad diem & locum infra content' ad testificand' visum ill. prout interius mihi præcipitur. Libr. Intrac' 686.

*Aliter.*

Virtute, &c. Domini Regis huic scedulæ annex' habere feci J. G. in eodem brevi nominat' visum de lx acr' pastur' cum pertinen' in G. quas H. F. in Cur' Dom' Regis coram Justic' suis apud Westm' clam' ut jus & hæreditat' suam versus præd' J. G. per breve Dom' Regis in forma donationis in discend. Et dixi quatuor milit' qui visui ill' interfuer' quod sint coram Justic' dict' Dom' Regis apud Westm' ad diem in dicto brevi specificat' ad testificand' visum ill' prout in eodem brevi mihi præcipitur.

*Habere fac.  
visum.*

Virtute, &c. Justic' infra script' certifico, quod nullus ex parte R. S. venit ad ostendend' mihi visum de Messuag' & pratis cum pertinentiis, infra script' Ideo ad execution' istius brevis per me nihil actum est ad præsens, Fitz. Retor. 103.

Nullus venit ad me ex parte infranominat' R. F. ad monstrand' mihi visum de pastur' infraspacificat' ob quam causam visum de pastur' ill' infra script' R. F. habere facere non potui.

*Note*

**Note** that in real Actions, where the Tenant doth not well know the Land demanded, he may pray the view, sc. that he may be shewed which is the Land demanded.

Also the Sheriff is bound to know, or to seek the Land demanded; and therefore, except the Demandant sheweth it to him, he may make his Return accordingly.

And therefore these be good Returns.

*Nullus venit ex parte petentis ad ostendend. mibi Tenementa petita, & Ideo dicto T.S. (petenti) de Tenementis enfraspec. habere visum ad præsens non potui, or non feci.*

*En prapice quod redd. brief issit de faire le tenant aver le view, le Vic. retourne que il mand. al Bayliff le Seignior del Franchise que respond. que le demandant ne vient pas pur faire le view, Fitz. Process 5.*

*Le Vic. Retor. que le tenant ne viegne pur aver le view, Fitz. View 126. Vic. retourne que il est prist a faire le view, & nul vient de part le tenant de aver le view, Fitz. View. 126.*

See plus hic postea tit. Br. de View.

**Note**, That upon a Writ of View, it is a good Return, Quod nullus venit ex parte petentis ad demonstrandum, (or ostendendum) sibi terram; for the Sheriff is not bound to know, nor to seek the Land, 14 H.6.20. & 32 H.6.27. Fitz. Retor. 103.

And if the Demandant shall shew to the Sheriff a Strangers Land, by force whereof the Sheriff enters, &c. yet is he no Trespassor, Kel. 119, 120.

Præcipe de Rent, the Tenant demands the view, which was granted, and the Sheriff returned, feci habere visum in Decem solid redditus, and this was challenged, for that the Return ought to have been, feci habere visum de terra unde redditus, &c. 41 E. 3. Fitz. Retor. 70.

When the Sheriff maketh the View, he ought to warn the Tenants and Depors; for otherwise the Tenants shall not know when the Sheriff maketh the View. Quære & vide Fitz. View 156. And the Sheriff and Depors must go to the Tenements demanded, &c. And the Sheriff must have him six (at the least) of the Jury to take the View, Co. Lit. 158.

*En brief de Droit le Vic. ne poet recorder le view sans les Veyers, sc. les 4 Chevalers que le view testimoine, Fitz. View 164.*

*Nota ou terr. ove meason sont en demand, chescun parcel serra mise in view, autrement est de Manner, car de Manner riens serra mise in view, mes le Seite ove les appurt. & nemy per parcels, &c. Fitz. view 115.*

*Le vic. retourne que le Defendans fist. le view de meason, & viender al lieu, &c. Et quant al 10 acres le Def. dit al Tenant que ceux 10 Acres de terr. fuer. in tiel field per certain no/me East, West, North & South. sans amesne le party al ascun parcel, &c. Et le view tenu bon, Fitz. View 134.*

In an Assize of Land in two Towns, the view ought to be made in both Towns, Fitz. Assize 122.

The view in an Assize, ought to be made where the Deiseisin began, Fitz. Ass. 28.

Where part of a Manor, or the like, is in demand, yet the view shall be of the whole, 11 H.4. Br. View 39.

So where a Moiety, or third, fourth, or other part of House or Land is only in demand, yet the whole shall be put in view, Br. View 46. 71.

If a Rent be granted, but out of no Land, and yet certain Land is charged to the distress if Rent be behind, there in any Assize this Land so charged shall be put in view, Br. Ass. 150.

If a Rent be granted out of one Land, and other Land within the same County charged to the distress, here both these Lands shall be put in view, *ibid.*

*Viewers*, are those that are sent by the Court to take the view of any place in question, for the better decision of the right: Old Na. Br. 112. Bracton lib. 5. tract. 3. c. 8.

It signifieth also those that are sent to view such as Essoin themselves de malo lecti, whether they counterfeit, or be in truth so sick as they cannot appear, Br. lib. 5.

It is used for those that are sent or appointed to view an offence.

And *view*, signifieth the act of these viewers, Minsh.

*Homine repleiand'.*

*Homine repleg.*

**V**irtute istius, &c. Domini Regis interius nominat' certifico quod nullum aliud breve, vel mandat' dicti Domini Regis de repleg' infrascript' J. C. quam W. S. infranominat' cepit & cap' tenet, prout interius specificat' quam istud breve de plur' repleg' præd' J. ad manus meas devenit, nec mihi liberat' fuit. Nihilomin' Justic' dicti Domini Regis ulterius certifico, quod statim post reception' ejusdem brevis accessi ad præd' W. S. de repleg' faciend' præd' J. quam præd' mihi ostendere noluit, sed præd' J. ante adventum istius brevis ad loca mihi incognita elongavit, & post receptionem ejusdem brevis; ipsa J. non est invent' in balliva mea, sic quod aliquam repleg' ipsius J. juxta mandat' hujus brevis ullo modo facere non potui, prout interius mihi præcipitur.

*Aliter.*

Nullum aliud breve præter istud de replegiand' infranominat' D.G. ad manus meas hucusque devenit. Et ulterius Justic' infrascript' certifico quod præd' D. elongatus est ad loca mihi ignota, per infranominat' J. T. J. B. & T. R. per quod præd' D. repleg' non possum, prout interius mihi præcipitur.

In a Writ de Homine Replegiando, it is a good return for the Sheriff to say, that the Defendant claimeth the Plaintiff to be his Willain, per quod ipse ulterius facere inde non potest, &c. Fitz. Ret. 47. & 58. Sed vide 32 E. 3. Fitz. Ret. 87. contra, that such a return was disallowed, and a sicut alias was awarded.

And yet vide Fitz. fol. 66. f. 68. b. that upon sureties found (in Court) by the Plaintiff to yield his body, &c. he shall have a special Writ to the Sheriff to deliver the Plaintiff, &c.

If the Defendant claimeth the Plaintiff to be his Ward, (in a Writ de Homine Repleg') it sameth to be a good Return for the Sheriff to say so; and the Plaintiff may have a special Writ, &c. shewing that he holds the same Land of the Defendant in Socage, and not by Knights Service, commanding the Sheriff to deliver the Plaintiff, &c. and to take Pledges of the Defendant for his appearance, &c. and to answer the Plaintiff, &c.

In a Writ de Homine Repleg. if the Sheriff return that the defend. hath essoined (or conveyed away) the body of the plaintiff; so as he cannot make deliverance, &c. Then the plaint. shall have a Capias in Withernam to take the body of the def. and him to detain, &c. until, &c. (be he a Par of the Realm, or other Common person:) And if the Sheriff

*Cap. in Wither-*  
11871.

8 H. fol. 2.  
Br. 104.

Fitz. 67. E.

Fitz. 68. C.  
Ret. 51.

riff return Non est inventus upon this Capias in Withernam for the body; then the Plaintiff shall have a Capias in Withernam of the Goods of the Defendants, 11 H.4. fol. 15.

In a Homine Repleg. the Sheriff returned that he could not have the view, &c. Et ideo, &c. Fitz. Mainprile 23. Intr. 402.

## C A P. LXIV.

Retorn. brevis de Inquirend. de Dampnis in breve de Dote, ubi tenens obiit seiscitus: Vide hic antea Retorn. de Dote.

*Retorn. brevis ad Inquirendum de Dampnis in breve Transgress.*

**E**Xecutio istius brevis patet in quadam Inquisitione, &c. Inquisitio indentat. capta apud W. in Com. C. (tali die & ann.) coram R.W. Armig. Vic' ejusdem Com' virtute cujusdam brevis Dom' Regis eidem Vic' direct', & huic Inquisitione consut', per Sacrament' R. S. &c. (ad numerum 12 Jurator.) Qui dicunt super Sacrament' suum, quod A.P. in brevi huic Inquisitione consut' nominat', sustinuit dampna occasione transgressionis pro J. H. in præd' brevi nominat', prout in eodem brevi fit mentio, ad xl s. Et pro misis & custagiis ipsius A. P. per ipsum circa sectam suam in hac parte appositis ad xl s. In cujus rei, &c.

Executio istius brevis patet, &c. (ut supra.)

Inquisitio, &c. Qui dicunt super Sacramentum suum, quod W. B. in dicto brevi nominat', sustinuit dampna occasione transgress. in eodem brevi spec' ad viginti solidos, & pro misis & custagiis suis per ipsum circa sectam suam in illa parte apposit. ad viginti solid. In cujus rei testimonium, &c. Aliter.

Inquisition, in what cases.	Upon an ad quod Dampnum. Libr. Intr. fol. 25.
	Upon a Writ of Admeasurement, &c. hic c. 49.
	Upon a Capias utlagatum, hic c. 54.
	Upon an Etate probanda, hic c. 57.
	Upon an Elegit, hic c. 58.
	Upon a Writ to enquire of Damages, c. 56. & 77.
	Upon an Extent of a Statute, or Recog. c. 58.
	Upon a Partition, hic c. 68.
	Upon a Proprietary probanda, hic c. 73.
	Upon a Rediffesin.
	Upon a Secunda Superoneratione, c. 76.
	Upon a Writ to enquire of Waste, c. 79.

The Sheriffs are first to swear the Jury, and to give them their Charge.

*Inquisition prise (& Retorne) fil ne monstre le certainty del Ann, jour, & lieu, del Inquisition prise, semble nest bon.*

*Et si le brief voile que le Enquest doit estre prise al un certain jour, le Vic. doit Retorne que il fuit prise a mesme le jour, per Belk, 40 E. 3. Fitz. Ret. 64.*

Ou le Vic. est de faire inquisition (per 12 homes, &c.) Et le Jury appear, & ont leur charge, &c. Et per reason d'ascun difficulty, le Vic. done al Jurors un respite per certein jours, & al jour issint appoint al Jury de doner leur verdict, lun del Jury fait default, Et le Vic. assesss fine de 40 s. sur luy, & retorne ceo, &c. tiel doner de respite al Jurors semble bon: Mes quare de tiel assessment de fine per le Vic. sur Juror de Enquest de office, per fesant default al jour, &c. Dyer 266. See hicc. 79. that the Sheriff may return such their departure and contempt.

Uncore si un del Jury en un Leet devant que il ad done son verdict, il serra fine per le Seneschall. Sed nota que Leet est Court de Record, & le Seneschall est Judge la, & nul forsque Judge de Record poet imposer fine (vide pur ceo, Co. 8. 38, 41, & 60.)

Et issint semble ou le Vic. est fait Judge del cause, come sur enquiry de wast.

Lou le Vic. est de faire Inquisition, semble que nul des dits Inquirors poet estre Challenge, pur ceo que ils ne sont forsque Enquest de Office, Vide Kiel 125. & hicc. 79. & quare, & Stamf. 131. a.

Si Vic. fait faux Retorne, Action sur le case gist vers luy; Mes ou le Vic. prist enquiry per enquest, & retorne ceo, coment que ceo soit faux, uncore le party n'ad remedy vers le Vic. ne vers ascun auter, Co. 5. 32. quod Nota, & soit bien observe per tous Vic.

Uncore in brief de enquire de wast, challenge poet estre prise, & sil soit deny per le Vic. ceo est Error. Eadem lex in Redissein, Br. Office 4.

Et issint le Vic. fera le Pannel, & uncore judgera ceo d'estre quash, si cause soit, Ibid.

Auxi in Proprietat. probanda les parties poient aver leur challenges, Co. L. 158. b.

In every case the Sheriff must make his enquiry by 12 men, and must return their Inquisition under his and every of their Seals by judgment.

And he must charge the Jury to make enquiry according to the Writ.

Upon an Inquisition taken by the Sheriff, if any doubt shall arise, &c. the Sheriff may return that he and the Jury were in doubt, shewing wherein, and so pray the advice of the Court therein, hicc. 5.

## C A P. LXV.

## Retorne de Levavi facias.

Levavi fac.

**T**. F. infrascriptus nulla habet bona sive catalla in balliva mea, de quibus denarios infrascriptos, aut aliquam parcellam inde levare possum, prout interius mihi præcipitur, &c.

Aliter.

Virtute, &c. cepi in manus Domini Regis quoddam hospitium cum tribus shopis (in tali loco) ipsius J. T. infrascripti, quæ valent per annum ultra repris. 10 l. Et quod præd' hospitium cum shopis præd' salvo custod' donec aliud a vobis inde habeo in mandatum. Regist. 300  
tit. 28. Fitz.  
266.

Upon a Levavi fac. if the Sheriff returneth that he hath levied 10 l. of the sum, &c. the which he hath delivered to the party, &c. this sameth

semeth to be a good Return : and upon this return the party may sue a Sicut alias levari fac. directed to the Sheriff to levy the residue, Fitz. 245. h.

Vide four sorts of Writs de Levari facias. Minsh. verbo Levari fac.

Lattiat.

Non est inventus retorn sur Lattiat. Libr. Intr. fol. 109. c. 166. d.

Also Cepi Corpus, and other returns may be made upon a Lattiat, as upon a Capias ad respond'.

Retorne de Liberate.

Liberate.

Upon a Liberate, if the Sheriff hath duly executed the Writ, and paid the Money to the Plaintiff, he needs not return the Writ, hic cap. 38.

Virtute istius brevis (tali die & anno) liberavi L. S. infranom. manerium infraspec. cum pertin. tenend. sibi & affig. suis ut liberum tene-mentum suum, quousq; sibi de debito infrascript. una cum dampnis, misis & expensis, quæ in hac parte rationabiliter sustinuit plenar. satisfac. fuerit, prout istud breve exigit & requirit, J. S. infranominat. non est inventus in balliva mea, Libr. Intr. 598.

*Nota que Liberate est prise in divers manners.*

1. Est brief al Vic. pur deliver terres ou biens prise sur forfeiture d'un, &c.
2. Est warrant grant al Treasurer & auters del Eschequer, pur le payment de ascun annual pension grant soub le grand Seal.
3. Est warrant al Gaoler pur deliver prisoner, &c. Terms del Ley.

## C A P. LXVI.

Retorne de Mandavi Ballivo Libertatis.

**V**irtute istius brevis mihi direct. Mandavi J. D. ballivo Libertatis T. Episcopi E. ad capiend. & arrestand. infranominat. J. S. in forma infra-script. qui plenum habet retorn. omnium brevium & præceptor. & execution. eorundem infra libertatem præd. Ac quod nulla execut. istius brevis per me fieri potest infra eandem libertat: qui quidem ballivus nullum mihi adhuc dedit responsum; vel sic, qui mihi respond', quod infranominat. J. S. non est inventus in balliva sua; vel sic, quod cepit corpus infranom. J. S. cujus quidem corpus ad diem & locum infraccontent. parat. habet ad fac. ea omnia quæ istud breve in se exigit & requirit.

A.B. Ar. Vic.

**I**n a Writ of Habeas Corpus at the Common Law was only a Distr. infinite, in the same County where the Land lieth; but at this day (vide Co.L. 100. b.) the Plaintiff may chuse whether he will sue by Process at the Common Law, sc. Distr. infinite, or by Process which is given by the Statute of 13 E. 1. sc. summons, attachment, and the great

Fitz. 137. b.  
Vide Co.L.  
100. 2. b.  
13 E.L. 9.

Mesue.

great distress, which shall have day of return by such time, that two Counties may be holden, in which two Counties the Sheriff shall cause to be proclaimed solemnly, that the Mesne do come at the day contained in the Writ, to acquit the Tenant of Plaintiff, &c. and if he come not, and the Sheriff returneth the Writ accordingly, then the Mesne shall lose the service of the Plaintiff, &c. See hic c. 152. Co. Lit. 160.

*Retorne de Brief de Medio.*

Summonit. Manucaptor' prout in alio breve.

Et ulterius vobis Justic' respondeo, quod in pleno Comitatu meo tent' apud C. &c. die, &c. publice proclam' feci, quod præd' H. veniret coram Justic' infra script', &c. si voluerit, prout per istud breve mihi præcipitur, &c.

*Si in ceo brief de mesne le Vic' retorne Nihil habet, &c. uncore issuera un Attachment, & si le Vic' retorne Nihil auxi a cel brief, uncore issuera un grand distress ove le proclam' ut super.*

*Nihil.*

Nihil habet Medius unde potest summoniri: which being returned upon that attachment Nihil habet per quod potest attachiari. After upon the grand distress Nihil habet per quod potest distingui. } Vide Stat. West. 2. c. 9.

*Return' super breve de Ordine Militari recipiend.*

*De ordine milit' recipiend.*

**V**irtute istius brevis tam infra libertates quam extra, per totam ball' meam, publice proclam' feci, quod omnes & singuli person' terr' & redd' ut infra script' est habentes, (quorum nomina in quad' scedula huic brevi annex' sunt script') ad præsentiam Domini Regis circa festum infra spec' personaliter compareant, & accedant ad præfat' ordinem recipiend' prout interius mihi præcipitur.

*Milit. Parliament.*

Eligend' Milit' Parliamenti, Vide ante & hic postea.

C A P. LXVII.

*Retorne de brief de Nativo habendo.*

*Nativo habendo*

**T**his Writ may go out to the Sheriff to hold plea of the matter in his County, or it may be returnable in Banco. Fitz. 78. A.

Upon this Writ sued out by the Lord, and directed to the Sheriff, the Sheriff may seize the Villein (if he can) and may deliver him to the Lord, if the Villein shall confess to the Sheriff that he is a Villein; but if the Villein shall alledge to the Sheriff that he is a Free-man, then the Sheriff may not seize him, but then the Lord must sue out a Writ called a Pone, to remove the Plea before the Justices of the Common Bench. Fitz. 77. A. c.

Also where the Villein shall purchase a Writ de Libert' probanda, the Sheriff is to proceed no further in the Writ de Nativo habendo; for the Fitz. 77. A.

the Writ de Libertate probanda, is as a Superfedeas, and thereupon the Sheriff is to adjourn the Record of Plea before the Justices, &c. Br. Villen 45.

Upon the Libertate probanda the Sheriff returned, that no such Writ de Nativo habendo was delivered to him, nor that he had no such Plea depending before him in the County, Br. Villen 45.

Upon a Nativo habendo the Sheriff returned Mandavi ballivo Libertatis, &c. Qui nihil dicit (*ou fecit*.) &c. Fitz. Ret. 52. Br. Villen 16.

The Sheriff of London in a Nativo habendo returned that (by their custom) if a Villen were abiding in London by a year and a day, that he was not to be taken out, and it was holden a good return, Br. Custom 22. & Ret. 46.

In a Nativo habendo the Sheriff may not return that the Defendant is a Free-man, &c. for that must come from the party himself, Br. Ret. 46.

*Vide le Retorne de Pone de Remover le plea in Nativo habendo, Libr. Intr. fol. 436. b. c.*

Admeasurement de { Dower } The plaint. shall have the like  
or { Judgment, as if the writ had  
Pasture } been returned served, Br. Ad. 7.

Affize, the Affize shall be taken.

Brief de Gard, the Plaintiff shall have Judgment as if the Writ were served, Br. Ret. 101.

Brief de Mesne, Process shall go out to fore-judge the Mesne, Vide Co. L. 100. a. b. who shall be bound by fore-judger, and who not.

Quare Impedit, Vide hic, Return of a Quare Impedit.

Scire facias, Two Nihil returned do counterbale Scire feci.

Sur Ni-  
bil Re-  
torne in

2 H. 7. 32.

Upon a Scire facias to execute a Judgment in Debt Trespass or Annuity, if at the first day the Sheriff shall return Nihil, the Plaintiff shall have Execution.

In an Accompt, the Defendant was Outlawed, and obtained his pardon, and had a Scire facias against the Plaintiff, who was returned Nihil, and the pardon was allowed upon one Nihil returned, &c. 21 E. 3. Br. Retor. 109.

Scire facias vers Executors, sur deux Nihil retorne, ils serra condemn, & charge de lour proper biens, Co. 5. 32.

Brief de Waste, The Plaintiff shall have Judgment, as if the Writ were served, Br. Ret. 101.

Retorn. brevis si defend. sit insuffic', &c.

Pleg. de prosequend. { J. D.  
R. R.

Infranominati A. B. & C. D. nihil habent in balliva mea per quod sum' possunt, (if it be in Debt, or other Writ where summons lieth.)

Infra-

*In Trespass.*

Infranominati H. B. & C. D. nihil habent in balliva mea per quod attachiari possint (or potest, if but one Defendant.)

*Note, if there be more Defendants than two, then you must name but one, & ceteri defend. infranominati, nihil habent, &c.*

*Sur Distr.*

Infranominatus A. B. nihil habet in terris, tenementis, & hereditamentis infrascript, per quod ipsum distringere possum.

*Or thus :* Nullum tale Manerium, neq; ulla terr' sive tenta' cognita per nomen de E. jac. in Com. Cantabr. unde tenentes inde distringere possum, prout interius mihi præcipitur.

*Sur Fieri fac.*

Infranominatus R. B. miles nulla habet bona seu catalla, ter. aut tenata in balliva mea, unde denar. infraspec. fieri fac. possum, prout interius mihi præcipitur.

*Sur Scire fac.*

Infranominatus A. B. nihil habet in balliva mea per quod ei Scire facere possum, neque est inventus in eadem.

A. B. Ar. Vic.

Plus hic fol.

## C A P. LXVIII.

*Partitions.**Retorna brevis Originalis in partitione.*

**P**Leg' de proseq.  $\left\{ \begin{array}{l} \text{J. D.} \\ \text{R. F.} \end{array} \right.$

Summ. infranominat. B. R.  $\left\{ \begin{array}{l} \text{W. H.} \\ \text{H. S.} \end{array} \right.$   
& E. uxoris ejus.

A. B. Ar' Vic.

*Note, That such a Return may be made in all other Actions real, if the Defendant be sufficient,*

*Nota, quant judgment serra done sur brief de Partition, le judgment serra tiel, sc. que partition serra fait inter les parties, Et que le Vic' en son person alera a les terres & tenements, &c. Et que il per le Serement de 12. loyal homes (de son Bailiwick, ou County) fera Partition enter les parties; Et que lun part de mesme les terres & tenements soient assignes al Plt. ou al un des Plts. & un auter part al un auter, &c. Et de le partition que le Vic. issint fera, il doit done Notice al Justices (per son Retorne) soub son Seal, & les Seals de chescun de les 12 Jurors, &c. Et le Vic. ne poet retorne quel partition il voil, Littl. 248, 249. Co. Lit. 169.*

*Et in tiel case, le eigne soer n'avera mie le primer Election, mes est al election del Vic. de assign. le eigne sa part, & l'auters lour parts: Et il poet assign' primerment un part al puisne, & dareignment al eigne, &c. Ibid.*

*Et sic nota que le Partition serra fait per le Jury, que doivent fair ceo egalment; & donque le vic. poet assigner lun part al un, & l'auter part al auter, a son election.*

*Mes le vic. doit Summon les parties d'estre deuant luy quant il fait le Partition.*

Sur:

Sur brief de Partitioe faciend. inter 2 Parceners, de 2 Manors, le Vic. poet assign lun Manor a lun, & l'aut. Manor al auter per Littl. 12 E. 4. fol. 2. Tamen per Broke, hoc videtur intelligi, ou les Manors sont de equal values. Et eadem lex de 2 Acres. Br. partit. 29.

Sur brief de Partitioe fac. (sur le Stat. 32 H. 8.) le Vic. retourne le partition fait per 12 loyals homes, & apres un des parties surmise inequality, & preia un novel brief; quere sil avera, Dyer 73.

A. & B. Tenants in Common d'un Manor. A. purchase Franktenement isint mixt ove les demesne terre que fuit disconus: B. petit brief de Partition des Manors tantum, & Judgment fuit done quod partitio fieret: Et brief fuit direct<sup>us</sup> al Vic<sup>um</sup> de fair partition accordant. Et fuit tenus per les Justie<sup>s</sup>, que A. doit monstre les bounds de son Franktenement ou la certenty, ou number des Acres del terres per luy issint purchase, &c. Et que B. ne besoigne de monstre les bounds del Manor al Jury. Mes si Evidence soit done de nul part. & le Jury fait partition de tanto quantum presumitur & dignoscitur per presumptiones, &c. sufficit: Car ils sont compellable de server de Ley, & le Court, Et coment que nul des parties uft done evidence, uncore le Vicount, & le Jury sont de fair partition a lour perils, Dyer 265, 266.

Si villen descend. al 2 Parceners, Coment le person ne poet estre divide, uncore le profit de luy poet estre divide; come un Parcener poet aver son Service un jour, ou un semaine, &c. & l'auter Parcener, auter jour, auter Semaine, &c. Co. Lit. 32. & 164

So an Abbotsdon may be divided between Parceners sc. the one to present one turn, and the other another turn, &c. Co. ibid.

So a Rent charge may be divided, &c. ibid.

Mes Estovers, come Housboote, Heyboote, &c. Pischary incertain, Common sans number, &c. ne poet estre divide, ibid. vide.

The profits of a Mill, of a Dovehouse, of Courts, of Tithes, and of stallage of a Fair, may be parted, Vide Co. Lit. 32.

*The Return of a Writ of Partition.*

Executio istius brevis patet in quadam inquisitione huic brevi annex<sup>2</sup>.

Virtute brevis Dom<sup>i</sup> Regis mihi direct<sup>us</sup> & huic partition<sup>i</sup> Indentat<sup>us</sup> annex<sup>2</sup> Ego, J. D. miles Vic<sup>i</sup> com<sup>i</sup> præd<sup>i</sup> xx die A. an. &c. xx assumpto Partitioe. mecum J. S. &c. xij liberis & legalibus hominibus de com<sup>i</sup> meo, ac de visnet<sup>i</sup> infra script<sup>i</sup> in præsentia H. F. in brevi præd<sup>i</sup> nominat<sup>us</sup>, in propria persona mea accessi ad tenementa in dicto brevi nominat<sup>us</sup> & ibid. per eorum Sacrament<sup>um</sup> (habito respectu ad verum valorem eorundem Tenement<sup>um</sup> cum pertin.) eadem tenement<sup>um</sup> in partitionem in tres partes equales partiiri feci, & unam partem eorundem trium partium, viz. xij pedes in longitud<sup>i</sup> & xvij pedes in latitud<sup>i</sup> messuagij in præd<sup>i</sup> brevi specificat<sup>us</sup> extend<sup>us</sup> ad terr<sup>am</sup> F. G. vocat<sup>us</sup> B. versus occidentem & xxxiv pedes in latitud<sup>i</sup>, & xij virgat<sup>us</sup> in longitud<sup>i</sup>, & unius Gardini in breve præd<sup>i</sup> specificat<sup>us</sup> eadem messuagio adjacen<sup>t</sup> abbutand<sup>us</sup> versus occidentem ad terr<sup>am</sup> præd<sup>i</sup> F. G. vocat<sup>us</sup> B. & terr<sup>am</sup> gleb<sup>i</sup> rector<sup>is</sup> de S. Nec non, &c. Et ego præfat<sup>us</sup> Vic<sup>i</sup> præd<sup>i</sup> xx die A. anno, &c. ea deliberari & assignari feci H. F. in dicto brevi nominat<sup>us</sup>, tenend<sup>us</sup> ei in separalitate, secundum formam & effectum brevis præd<sup>i</sup>. Ac prout idem breve in se exigit & requirit.

Quæ quidem integra tertia pars præd<sup>i</sup> tenement<sup>um</sup> in præd<sup>i</sup> brevi specificat<sup>us</sup> præf. H. in forma præd<sup>i</sup> deliberat<sup>us</sup> & assignat<sup>us</sup> est; & quoad duas partes resid<sup>us</sup> præd<sup>i</sup> tenementorum in brevi præd<sup>i</sup> specificat<sup>us</sup> J. F. in

eodem brevi similiter nominat' ad partitionem præd' deliberand' & assignand'. Justic' Dom' Regis in brevi præd' specificat' certifico, quod nullus ex parte ipsius J. venit ad recipiend' de me præfat' Vic' easdem duas partes. Ita quod duas partes illas præfat' J. liberare & assignare non potui, prout breve præd' in se exigit & requirit. In cujus rei testimonium tam sigillum mei præfati Vic. quam sigilla præd' xij Jurator', huic partitioni indentat. sunt appens. dat. die & anno supradict'o.

*Aliter.*

Ego A.B. Ar' Vic' Com' præd' Justic' in brevi huic schedulæ annex' specificat' Certifico, Quod virtute brevis illius in propria persona mea 10. die Aug. Anno, &c. accessi ad messuagium in brevi præd' specificat' & per Sacramentum J. S. R. B. &c. (ad numerum 12) probor. & legalium hominum de Com' præd' ac visnet' in eodem brevi specificat' (habito respectu ad verum valorem ejusdem messuagij,) eundem messuagium cum pertinet in quatuor equales partes partiri feci, unam partem partium illarum, viz. &c. Tenend' H.S. & F. uxori ejus (in brevi præd' nominat') in separalitate, per metas & bundas in jure ejusdem F. Aliam partem inde, viz. &c. tenendum J. C. & M. uxori ejus (in brevi præd' nominat') in separalitate, in jure ejusdem M. Et duas alias partes inde, viz. &c. tenendum præfati J. S. in separalitate, in jure suo proprio. Et ego præfatus Vic' die & Anno supradict' eas deliberari & assign' feci prout idem breve in se exigit & requirit. In cujus rei testimonium, &c.

Vide libro Intrac' fol. 453. c. d. *The like return of a partition of certain Manors, with the appurtenances, into two parts.*

*Per quæ servitia.*

*In a per quæ servitia, against the Heir of the Tenant & the Sheriff returned, that the Tenant in his life time sold the Land in Fe, &c. So that the Heir had never any thing therein, &c. Fitz. per queux servic' 13. 14.*

## C A P. LXIX.

*Retorn. de Summon. Parliamenti.*

*Parliam'.*

**E**Xecutio istius brevis patet in quibusdam Indenturis huic brevi annex'.

*Retorn' de Summon' Milit' Parliamenti.*

**V**irtute, &c. sum' feci A. B. Militem, unum Milit' de Com' meo gladio cinctum per B.T. & C.B. quod sit coram Justic' infra script' ad diem & locum infranominat', prout istud breve in se exigit & requirit, Manu capt' infranominat' A.B.B.T. & C.B.J.D.R.R.  
Exitus cujuslibet eorum, xx s.

Retorna Eligend' Milit' Parliamenti & Burgess. *See hic antea.*

*Retor.*

*Retorn. brevis de Proclam. de Adjournamento Parliamenti.*

Executio istius brevis patet in quadam Schedula huic brevi annex.

Virtute brevis Dom' Regis mihi directi, & huic schedulæ annex. *Ei Cantabr.*  
dem Dom' Regi certifico, quod 16 die J. Ann. Regni dicti Dom' Regis,  
&c. apud Cantabr' in Com' præd' & 20 die ejusdem mensis J. Anno  
supradicto, apud Linton in eodem Comitatu ac 27 die J. Anno supra-  
dicto apud Newmarket in eodem Com' Nec non 9 die F. Anno supra-  
dicto apud E. in eodem Com' Proclamari feci omnia & singula in eo-  
dem breve content' secundum formam & effectum ejusdem brevis, Et  
prout per breve illud mihi præceptum fuit; In cujus rei testim' ego A.  
B. Ar. Vic' Com' præd' huic. Schedulæ, sigillum meum apposui.

*Præmunire.*

Upon this Writ the Sheriff may Return, Quod Præmunire fecit;  
&c. quod esset, &c. coram, &c. ad faciend' quod istud br. exigit, &c.  
Fitz. Retorn. 61.

And such garnishment ought to be two Months befoze the Re-  
turn, ibidem.

The Sheriff returned that the Defendant was garnished gener-  
ally, but shewed not upon what day, &c. This was holden void,  
Fitz. Ret. 65. Br. Retor. 56. 103.

**V**irtute istius brevis tali die & anno per, J. S. T. W. R. T. & E. F. *Præmunire.*  
probos & legales homines de balliva mea, præmunire feci W. R.  
clerico infranominat', quod sit coram Dom' Rege ad diem infracon-  
tent' ubicunque, &c. ad faciend' & recipiend' prout istud breve in se  
exigit & requirit; Et J. B. & ceteri defend' infranominat' nihil habent  
in balliva mea per quod eis Præmunire facere possum ad præsens, nec  
sunt invent' in eadem, Fitz. Retor. 61. & 65.

## C A P. LXX.

Br. 125.

**I**n a Præcipe quod reddat of Land, it is a good return for the *Præcipe quod reddat.*  
Sheriff to say that the Tenant is dead: 32 H. 6. 27.  
Præcipe quod reddat, is a Writ of great diversity, touching both  
the form and use, and extendeth as well to a Writ of Right, as to  
other Writs of Entry or Possession.

*De queux choses briefs de Entry gist, & de queux nemi, Vide West. de Recoveries, Sect. 2, 3. 6, & 7.*

If the Sheriff shall return that the Tenant, who is an Abbot,  
&c. is deposed, this is a good return; for that is as much as if  
he had returned him dead.

But if the Sheriff shall return that the Tenant is an Infant, or  
a Feme Covert, these Returns are not good, Dyer 104.

In a Præcipe quod reddat, the Sheriff returned, Quod defendens non  
est

est tenens, & quod Nihil habet unde eum Summon. potuit, *Quare si bon, eo quod petens testatur quod tenens est, & per ceo le Vic. poet aver luy Summon in terra petita.* Vide Br. Summons, 23. & Fitz. Retor. 97. & hic cap. 36.

In a Præcipe quod reddat, The voucheth, and the Sheriff returneth (upon the Summons ad warrantizandum) that the vouchæ, <sup>14 H. 6. 20 Br. 62.</sup> nihil habet, nec est inventus, &c. this is a good return; but otherwise it is in a Formedon; for that in a Formedon the Sheriff may summon him in the Land demanded, whether he be Tenant thereof or not, Vide Fitz. Retor. 97.

In a Præcipe quod reddat, it is no return to say, that the Tenant hath yielded the Land to the Demandant, <sup>2 H. 7. Br. Retorn. 84. Fitz. Retor. 34.</sup>

And yet the Sheriff is by this Writ authorized to Command the Tenant to yield the Land to the Demandant, Co. Lit. 101.

But if (upon command of the Sheriff) the Tenant shall yield the Land; yet it seemeth that the Sheriff must Summon the Tenant (and must return the same) for that the yielding of the Land must be in the Court, when the party cometh in, Kel. 116.

In a Præcipe against two, if the Sheriff returneth one of them Summoned, and the other not, this is no good return, but he must Summon them both, and so make his Record. Br. 89.

In a Præcipe quod reddat, if the Sheriff shall return the Tenant summoned, where indeed he was not summoned, whereby the Tenant loseth his Lands by default, upon the Grand Cape returned, the Tenant shall have his Action against the Sheriff for such false return, N. Br. 51. <sup>Fitz. 97. c.</sup>

Note that in a Præcipe quod reddat of Land, there ought to be two Summoners, Plo. 393. a.

*Car si n'ad forsque un, & le Tenant fait default, & perde per default il avera brief de Disceit,* Ibid. & Fitz. 97. c.

And the Sheriff or his Officer, in the presence of those Summoners ought to Summon the Tenant, first to keep his day of the Return (naming that in certain) again he ought to name the Demandant, and also to name the Land in demand, Hic cap. 31.

In a Præcipe quod reddat, upon the Summons if the Sheriff by information of the Demandant Summoneth the Tenant in another mans Lands, thinking it to be the Tenants Lands, the Sheriff shall be excused here for this his Entry into another mans Land, Doctor & Stud. 150.

Process.

Return de Process Original: sc. Capias, Alias, & Pluries; & hic antea Retorn. de Capias.

Retorn. de Venire facias: & hic postea.

Vide Retorn. de { *De Adjournment Parliamenti*, cap. 69.  
Proclam. { *Sur uilary*, Hic cap. 59.  
              { *Extra Cancellariam*, cap. 81.

Vide de Retorne { *Br. de Admeasurement*, cap. 49.  
Pro clam. de Sum- { *Br. de Communi Custodia*, Ibid.  
mons in { *Br. de Dower*, cap. 56.  
              { *Sur exigent*, cap. 59.  
              { *Br. de Wast*, cap. 79.

Retorne

*Retorne de Pone, sc. de remover Plea, &c.**Pone.*Pleg. de presequend. *J. D. R. F.*Infranominat. *H. E. Attach. est per pleg. N. F. R. D.**R. M. Mil. Vic.*

**O**r the party may be Attached by his Goods, and then the Sheriff may return it thus: Infranom. *H. E. Attachiatus est per unum equum precij xx s.*

Infranom' *J. H. nihil habet in balliva mea per quod Attachari potest.*

*Nota, que chescun Pone est forsque summons: sc. Command al Vic. de Summon, ou prefix. jour al parties, Plaintiff, & Defendant que ils sont in Bank, &c.*

**I**f it be in a Writ of Right, See what the Sheriff must Return, *Hic. cap. 56.*

**A**nd if it be in a Replevin, the Sheriff must return the Plaintiff out of the County Court in Banco, and return the same under the Seals of four Suitors of the same Court, as followeth.

Virtute istius brevis mihi direct' posui coram Justic' Dom' Regis de Banco apud Westm' loquelam quæ est in Com' meo Per breve dicti Dom' Regis, inter *T. W. & H. B. de averiis ipsius T. W. capt. & injuste detent. ut dic' prout patet in quadam scedula huic brevi annex. &c.* *Pone sur repleg.*

**O**r thus, Virtute istius brevis in forma infra spec' posui loquelam infra script' ad diem & locum infra content' prout interius mihi præcipitur; cujus quidem loquelæ Recordum patet in Scedula huic brevi consue' simul cum alio breve unde infra fit mentio', *Libr. Intrac. fol. 570. d.*

Summon *T. P. J. D.*

Ad Com' meum tenent' apud *C. 12. die A. Anno Regni Dom' Regis nunc, &c. 20. T. W. queritur versus H. E. de placito captivis & injustæ detention' averior'; Et fuit pleg' de prosequend' & retorna habend', si ret' inde adjudicet' viz. J. M. W. F. In cujus rei testimonium J. K. B. C. D. G. & R. S. quatuor legales homines ex illis qui recordo illo interfuer' in plena curia illa eidem record' sigilla sua alternatim apposuerunt, die & ann. supradictis.* *Scedula.*

12 E. 11.  
Bn 103.

**I**n a Replevin a Pone went out, and at the next Court the Plaintiff was nonsuit in the County; yet by Catesby, the Sheriff may serve the Pone, and execute the same (sc. to require the view of the Plea, and to Record and return the same) but Mr. Brook maketh a Quære thereof, for that by the nonsuit, it sameth there resteth nothing to be removed: But the Sheriff may return, Quod ad proxim' comitatum, &c. *le Plaintiff fuit nonsue', & sic nul parol la.*

But notwithstanding that the Plea be discontinued in the County, yet it may be removed by a Recordari, *Vide Fitz. 71. a. & Br. Retor.*

113.

**A**nd note that the Pone, and the Recordare, be only to remove the Suit into the Kings Court: And the Plaintiff only shall be removed.

*Retorn sur brief de Proprietate probanda, &c. hic cap. 73.*

## C A P. LXI.

*Quare Impedit.**Quare Impedit.*

**I**n a Quare Impedit, the Defendant must be Summoned by the Sheriff, Fitz. br. al. Evelque 4. 11 H. 6. 3.  
Br. 101.

And this Summons may be made in the Church, or to the person.

In a Quare Impedit, the Sheriff returned nihil, upon the Summons, and upon the Attachment, and upon the Disfrels, and it was holden that the Plaintiff should recover, by the intendment of the Statute made Anno Tamen Martin contra, and that the Sheriff might have summoned the Defendant in the Church, Vide hic. c. 31.

If the Sheriff return upon a Quare Impedit, Quod querens non invenit plegios, then the Plaintiff may find pledges in the Common Place, and shall have a new Writ of Quare Impedit, and if the Sheriff return thereupon, Tarde, and the Defendant appear, and the Plaintiff be demanded and comes not, the Defendant shall not have a Writ to the Bishop, for that no Writ was served upon the Defendant. Fitz. 38. c.

If the Defendant comes not at the Disfrels returned against him, the Plaintiff shall have a Writ to the Bishop, without making any Title, Vide Dyer 241.

## Quid Juris Clamat.

Upon the Writ of Summons in a Quid Juris Clamat, the Sheriff is to return the party Summoned in this or the like manner.

Plegij infranom'  $\left\{ \begin{array}{l} E. F. \\ J. S. \\ J. D. \end{array} \right.$

A. B. Ar<sup>o</sup> Vic<sup>o</sup>.

*In quid Juris Clamat le vic. Retorne quod Clericus est non habens laicum feodum, &c. Et fuit adjudge nul Retorne, car doit Distr. luy en le terr. en demand, Fitz. Retor. 59.*

*Quo Jure.*

Virtute, &c. tali die & anno, &c. Cepi in manus Dom. Regis tene- Fitz. 38. 12.  
menta infra script. cum pertinent. Et alterius eisdem die & anno scire feci, tam A. B. capitali Dom. immediat. feod. tent. infra script. cum pertinent. quam infra script. H. D. per probos & legales homines de balliva mea, quod sint coram Justic. infra script. ad diem & locum infra content. auditur. recogn. infra. prout interius mihi præcipitur. Et ulterius eisdem Justic. certifico, quod non est alius capitalis Dominus feod. præd. mediat. neque immediat. inter Dominum Regem, & infra script. A. B. cui scire facere potui.

## C A P. LXXII.

*Retorn. de Recordari facias Loquel. in Comit.*

**R**ecordare est de remover Plaints in County Courts, Fitz. 70. b.  
*Cheſcun brief de faux Judgment, ſur Judgment done in le County Court, eſt un Recordare & eſt direct al Vic. Fitz. 18. Ab.*

Virtute iſtius brevis mihi directi in pleno com. meo tent. apud C. in com. C. inſcript. tali die & anno, recordari feci loquelam quæ eſt in eodem com. inter partes inſcript. unde interius fit mentio, quæ quidem loquela patet in quadam ſchedula huic brevi annex'. Et record. illud habeo coram Juſtic. inſcript. ad diem & locum inſracontent. ſub ſigillo meo, & ſigill. W. H. T. R. &c. quatuor proborum & legalium hominum oꝝ milit. ejuſdem com. ex illis qui record. illi interfuerunt. Et partibus inſcript. diem illum præfixi, quod tunc ſint in loquela illa, prout juſtum fuerit proſecutur. prout interius mihi præcipitur.

Ad com. meum tent. apud C. in com. præd. tali die & anno, coram H. W. S. S. T. V. & A. B. quatuor ſectator. curiæ præd. inter alia ſic continetur.

R. S. queritur verſus J. T. de placito captionis & injuſtæ detentionis averiorum ſuorum (contra vad. & pleg. &c.) Et ſunt pleg. de prof. Nec non de retorn. habend. ſi retorn. adjudicetur.

Pleg. de prof. J. D. R. F. In cujus rei, &c. Ut antea in Retorn de Pune.

Virtute iſtius brevis mihi directi recordari feci loquelam quæ ſuit in com. meo inter partes inſcript', & eiſdem partibus diem præfixi, eſſendi coram Juſtic. inſcript. ad diem & locum inſracontent. prout iſtud breve in ſe exigat & requirit: Quæ quidem loquela patet in quadam ſchedula huic brevi conſuta.

A. B. queritur verſus C. D. de placito captionis, & injuſtæ detentionis averior' ſuorum.

Plegij de proſequend. &c. (ut ſupra.)

Virtute iſtius brevis recordari feci loquelam, quæ eſt in com. meo ſine breve Dom. Regis, inter W. H. & A. D. de averiis iſtius W. H. captis & injuſte detentis, ut dicit. Et record. illud habeo coram Juſtic. inſcript. ad diem & locum inſracontent. ſub ſigillo meo, & ſigillis A. B. C. D. E. F. & G. H. quatuor legalium militum de com. meo ex illis qui recordo illi interfuerunt, prout patet in quadam ſchedula huic brevi annex. ſecundum exigentiam iſtius brevis, &c.

Ad com. meum tent. &c. ut ſupra.

Virtute iſtius brevis mihi directi in pleno com. meo tent. apud caſtrum C. in Com. Cantab. inſcript. (tali die & ann.) recordari feci loquelam unde interius fit mentio; quæ quidem loquela patet in quadam ſchedula huic brevi annexa'. Et recordum illud habeo coram Juſtic. inſcript. ad diem & locum inſracontent, ſub ſigillo meo & ſigillis W. H. E. R. &c. quatuor proborum & legalium militum ejuſdem com. ex illis qui record. illi interfuer. & partibus inſcript. diem illum præfixi quod ſint ibidem in loquela ill. prout juſtum fuerit proſecutur', prout interius mihi præcipitur.

*Scedul.*

Residuum executionis istius brevis patet in quadam scedula huic brevi annex.

*Querela.*

R. S. queritur versus T. R. de placito captionis & injuste detentionis averiorum suorum.

A. B. Ar<sup>o</sup> Vic.

Virtute hujus brevis Recordari feci loquelam quæ fuit in Com<sup>o</sup> meo sine brevi Dom<sup>o</sup> Regis inter J. W. & H. S. infrascript<sup>o</sup> de averiis ipsius J. capt<sup>o</sup> & injuste detent<sup>o</sup>; Et eisdem partibus diem & locum infracontent. præfixi, quod tunc sint ibi in loquela illa, prout justum fuerit, processurum; prout istud breve in se exigit & requirit, Cujus quidem loquelæ recordum huic brevi est Consur<sup>o</sup>, &c. Liber Intr. fol. 570. d.

Qu. R. S. Queritur, &c. Ibid.

Upon the Recordari, the Sheriff is first to Record the Suit in full Court, and then to return the same under his own Seal, and the Seals of four Suitors of the same Court. And after the Sheriff is to Summon the Defendant to be there at the day of the Return therof. *Issint il tous foits prefix un jour in Banco al partie*, Fitz. 70. b. Finch. 122. hic cap. 114. That the Sheriff may cause this Writ to be openly read in the same Court; so that the parties may have notice of the day of their appearance.

*Mes Riens serra remove forsque le Pleint, coment que ils sont al issue*, Fitz. 71. a. & 3 H. 6. fol. 39.

If the Return shall be ad Comit. meum tentum, &c. Recordari feci loquelam quæ est in eodem Com. coram me; this is not good; for the Suitors are Judges there: And therefore the return must be, Recordari feci loquelam quæ est in eodem Comit. coram Sectatoribus Curie, and not coram me, 21 H. 6. Fitz. Retor. 17.

And the Schedule must be, Ad Comit. meum tent. (tali die & Anno) coram such and such, Sectatoribus Curie, and not coram me.

In a Recordari de averiis, it is a good Return for the Sheriff, quod Causa non est vera, 30 E. 1. Fitz. Retor. 114.

The Sheriff upon this Writ may return Tarde. Fitz. Recordari 8.

Note, that a Recordari is to remove the Suit into the King's Court, sc. out of the Court of Ancient Demesn, Hundred Court, County Court, or Lords Court, upon a false Judgment given in any of them.

But where the false Judgment is given in any other Court Baron than the County or Sheriffs Court, there it is called an Accedas ad Curiam, Fitz. 4. 13. 70.

If the Plaintiff be removed out of the County Court by a Recordari, &c. and the Recordari beareth date before the Plaintiff be entered in the County Court, and the Sheriff remove it, it is good: But if the Record be removed out of the Court of another Lord, by such a Writ, bearing date before the Plaintiff be entered, it is not good, Fitz. 71. d.

Note, that in the Writ de Accedas ad Curiam, the Sheriff must take with him four men of the same County: But in this Recordari fac<sup>o</sup> loquelam, the Sheriff needs not take any with him: But both these Writs must be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the same Court, Hic cap. 113.

Upon a Writ of Recordari fac<sup>o</sup> loquelam, directed to the Sheriff, although the Plaintiff or Suit be determined, yet the Sheriff is to make Execution, and Return of the Writ, sc. to require the view of the Plea, and to Record and Return the same, &c. Vide Dyer 268. Pl. 17. & Fitz. 71. a.

The Sheriffs duty in executing this Writ, See hic cap. 93.

C A P.

*Redifficijm.*

Fitz 18. c.

## C A P. LXXIII.

*Retorne de Replevin sur Retorn. habend. Averiorum.*

**P**Leg' de prosequend' & de retorn' inde habend', si retorn' inde ad-Repleg' judicetur, J.D. R.R.

Virtute, &c. Repleg' feci infrascripto R. averia infrascript', prout in isto brevi mihi præcipitur: Et ulterius infranom' Dom' Regi certifico, quod nullum aliud breve de infrascriptis averiis repleg' unquam præter istud breve mihi liberat' fuit, &c. *Quere if the clause be good. &c.* hic infra 28 H. 6.

Virtute, &c. (tali die & anno) Repleg' feci R.B. infranominat' averia *Aliter.* sua infraspacificat' quæ infranominat' T.M. & R. S. ceperunt & injuste detinuer' secundum formam hujus brevis, prout interius mihi præcipitur. Et infrascript. T. & R. attachiati sunt per centum oves precij 6 l. per T.F. ballivum, per placitum, J.T. & R.M. Et infranominat' R.B. Attachiat' est per dict' ballivum meum per tres vaccas precij 3 l. per pl' præd' J. T. & R. M. Et nullum aliud mandat' five breve Dom' Regis præter istud breve de averiis præd' Repleg' ante advent' istius brevis mihi unquam liber. fuit.

Virtute istius brevis mihi directi deliberari feci infranominat' J. B. *Aliter.* averia quæ T. M. cepit, & eidem T. M. in curia Domini Regis adjudicat' fuer' prout interius mihi præcipitur.

A. B. Ar' Vic'.

*If the Defendant hath return awarded him, and he sues a Writ, de Retorno habendo, and the Sheriff returns upon the plur. quod averia elongata sunt, &c. here he shall have a Scire facias against the pledges, &c. Fitz. 74. f. & 7 R. 2. Fitz. Wither. 11.*

*Upon a Replevin directed to the Sheriff, it seemeth that he needeth not to return the Writ, until the Pluries Replevin: But if at the Pluries he doth nothing, an Attachment shall go out against the Sheriff, directed to the Coroners, &c.*

*Et nota que le Pls. poet suer tout le brief, sc. le Replevin, Alias, & le Pluries, tout al un temps, & poet deliver eux al Vic. come a luy semble bon. Fitz. 68. e.*

*It seemeth that the Writ de Retorno habendo, is not returnable. Fitz. Replev. 3.*

*Also note, That the Sheriff befoze he maketh deliberance of any distress, &c. must not only receive of the Plaintiffs pledges de Prosequendo, but also pledges for the return of the Beasts, if the return be awarded. And if the Sheriff taketh insufficient pledges de Retorno habendo, they are no pledges: And he shall answer the price of the Beasts, &c. sc. a Writ of Detinue lieth against the Sheriff who made the Replevin. Vide Br. Detinue 6. & hic c. 114.*

Virtute, &c. Domini Regi certifico, quod post receptionem hujus *P. ur. Repl.* brevis, per totam ballivam meam diligenter inquisivi, & nullo modo mihi constare potest, quod aliqua averia infranominat. W. P. capt. fuer. & injuste detenta per infranominat. J. N. prout in breve supponit. Ita quod executio istius brevis secundum tenorem & effectum ejusdem per me fieri non potuit, prout interius mihi præcipitur: Et ulterius Domino Regi certifico quod nullum aliud breve de plur. Repleg. præter istud breve mihi unquam deliberat. fuit. (Quære de hoc, & vide, 5 H. 7. 27. hic postea.)

In a Replevin the Sheriff returned (at the plur.) quod nullus venit ex parte quer' ad demonstrand. sibi averia: And he returned further, *21 H. 6.* quod nulla alia brevia inde ad suas manus deveniunt; And it was holden an ill return, and the Sheriff was therefore amerced; for it is a contempt in the Sheriff if one Writ comes to him, and he returns quod nulla alia brevia, &c. *28 H. 6. Br. 9. Fitz. Ret. 20. Vide Dyer 189. tiel Return.*

Upon the Pluries Repleg. the Sheriff returned, that he could not make deliberance, &c. for that the Defendant claimed property therein, and thereupon a Writ de proprietate probanda was granted out to the Sheriff, assumptis tecum custod. placitorum Coron. &c. commanding him to make deliberance to the Plaintiff, if it be found for him: And upon the property found for the Plaintiff, then also (if the Plaintiff shall find pledges de Prosequendo) the Sheriff ought to attach the Defendants, ac respondendum tam Domino Regi de contemptu, quam querenti de dampnis, &c. *Regist. 83. 87. Dyer 172, 173. Br. Propr. probanda 1. 32. 40. & 49. Fitz. Repl. 12.*

*Mes nota que le trial del property in le County per brief de proprietate probanda nest que Enquest de Office, & poet estre travers & trie arere, &c. Br. propriet. prob. 49. 1 E. 4.*

And before the enquiry if the property be made by the Sheriff in his County Court, the Sheriff is to give warning or notice thereof to the Defendant, to the end he may be present if he will, *Regist. 83. 85.*

And besides, the Sheriff must give warning thereof to the Plaintiff to be there to give in his evidence, *1 E. 4. 9.*

Ante adventum istius brevis, Averia & catalla infranom. K. quæ W. Averia e- C. cepit & injuste detenuit, ut dicitur, Elongata fuerunt per prædict. longat. W. C. Ideo præfat. K. averia & catalla sua prædict. Repleg. non possum, &c.

Nullum breve de averiis infrascript. Repleg. præter istud mihi unquam liberat. fuit. Et ulterius Domino Regi certifico, quod ante advent. istius brevis averia præd. elongat. fuerunt, & ad loca mihi ignota transmissa per infranom. J. T. Ita quod ea infrascript. W. nullo modo Repleg. possum, prout interius mihi præcipitur. *Aliter. Dyer 188.*

Ante adventum, &c. averia infrascript. per infranom. T. C. elongata fuer. ad loca mihi incognita; Ita quod visum eorund. infranominot. *Aliter fur 2. deliverance.* A. H. & T. C. retornand. habere non potui, prout interius mihi præcipitur.

Virtute, &c. Domino Regi in Cancell. sua certifico quod averia & catall. per infranom. A. B. prius capt. elongata sunt ex com. infrascript. ad loca mihi incognita, per infrascript. T. R. Ideoque averia & catall. præd. infrascript. R. retorn. non possum, prout interius mihi præcipitur. *Aliter in Cancell.*

Ante adventum istius brevis, averia infrascript. elongata fuerunt per infranom. J. M. ad loca mihi incognita, sic quod averia illa infrascript. N. M. retorn. non possum, juxta formam hujus brevis. *Aliter fur 2. deliverance.*

Upon

Upon a Pluries Repleg. out of the Chancery, returnable in Banco, the Sheriffs of London returned that they ought to make Replevin, by their custom, upon a Plaint in their Sheriffs Court, and not by Writ out of the Chancery; and this Return was holden to be insufficient (by all the Justices) and other Pluries Repleg. was awarded to the new Sheriffs, and Process of contempt to attach the old Sheriffs. Dyer 245, 246.

*Retorn. præcepti sur second. deliverance in Com.*

**P**Leg' de prosequend' & de retorn' habend, &c. J.D. R.R. Virtute, &c. Ego W.A. unus ball. infranom' petij de J. T. & R. N. infrascript. deliberation. de averiis T. B. infrascript. viz. de tribus bobus precij cujullibet bovis xx s. & duobus equis precij cujullibet equi xx s. & renuere inde facere deliberationem, & præd' averia elongata sunt ad loca mihi ignota, per quod inde deliberation' facere non potui, prout interius mihi præcipitur. Et præd' T.J. attach. est per unam crateram argenti, ad valenc' xx s.

*Replevin.*

*In Repleg' le Plt. fuit Nonsue per que le Def. aver brief de Retorno Habendo, Et sur le Retorno Habendo, le Vic' retorne que le Plt. aver esloigne les avers, per que, &c. Ceo est bon retorne, Dyer 41. & 59. Fitz. 74 f.*

*Mes si le brief de Retorno Habendo soit agard al Vic' apres Second Deliverance pris per le Plt' le Vic' n'ad power de server le Retorno Habendo, mes le Second Deliverance, Dyer ibid. C. nota que le Second Deliverance est un Superseas de le brief de Retorno Habendo, & close le mains dei Vic' issint que il n'ad Authority de fair ascun Retorne sur le brief de Retorno Habendo, Dyer 41.*

*Sile Vic' sur le second deliverance delivra les beafts al Plt. Et ne retorne le brief issint que le Def. ne poet aver Retorne, il avera son remedy vers le Vic' 8 R. 2. Br. Second deliverance 12.*

**Where the Sheriff taketh insufficient pledges, de retorno habendo, they are no pledges, Br. 2.** *Retorn. des Avers.*

**If a Man hath a return adjudged for him, this is no satisfaction for the thing for which it is awarded; but the Defendant shall retain this as a pledge or gage until he be satisfied: But he hath not any property therein, so that if afterwards sufficient amends shall be rendered to him, he ought to accept thereof; otherwise the Plaintiff shall have a Writ of Detinue: Br. 6. 17.**

**Br. 11.** *Nota ou le tenant offer le rent, ou amercement, tempore districtionis factæ ou apres le distress prise, & le Seignior refuse, il n'avera Retorne.*

**Fitz. 68. f.** **If the Sheriff upon the Repl. Sicut alias, or plur. shall return that he hath sent to the Bayliff of the Franchise, &c. who hath made no return to him; or that he will make no deliverance, &c. Then the Plaintiff may have a Non omittas to the Sheriff, commanding him to enter the Franchise, and to make return: And if then the Sheriff shall not do this, the Plaintiff shall have an alias, and plur. &c. to the Sheriff: And yet it sameth that these returns, scilicet mandavi ballivo libertat' &c. qui mihi nullum dedit responso: that the Bayliff will make no deliverance,**

verance, &c. are no good Returns: for by the Statute of West. 1. c. 17. it appeareth that the Sheriff, upon such returns made to him by his Baplift, ought presently to enter into the franchise himself, and to make deliberance of the Goods taken, &c. See the Stat. 52 Hen. 3. cap. 21. 3 E. 1. c. 17

Note, that there be divers manners of causes, which the Sheriff may return upon the pluries, for which he cannot make Replevy or deliberance: See the Register, & Fitz. 73. g.

Also note, that upon these returns following made by the Sheriff, the Plaintiff shall have a Capias in Wicherman, directed to the Sheriff to take so many of the Cattel of the Defendant, &c. sc. if the Sheriff upon the Plur. shall return, Fitz. 68. g. Withernam

1. Quod præd. B. averia præd. A. cepit & ea fugavit, de com. præd. in S. per quod eidem A. Repl. non potuit, &c.

2. Quod mandavit ballivo libertatis, de R. cui retor' brevium, &c. qui respondit quod averia elongata sunt, &c. per quod non potest habere visum eorum; *Nec de fair deliverance.* Fitz. 68. g. Vide Fitz. 69. b. & 74. a.

3. That he himself cannot have the view of the beasts to make deliberance.

But in this former case it seemeth the Return must be further, sc. Quod accessi ad locum, & visum habere non potui; For otherwise it may be that he could not have the view of the cattel; for that he came not where the lattel were, 2 E. 3. Fitz. R. 76.

And yet if the cattel be driven into a Fort or Castle, the Sheriff may return quod averia elongata sunt. Finch. 354.

4. That after the taking, &c. the Defendant hath essoigned (or conveyed away) the cattel out of the Baplitwick, whereby he cannot make deliberance.

5. That the Defendant hath essoigned the cattel to places unknown, by reason whereof he cannot have view of the cattel to make deliberance.

6. Quod mandavit ballivo libertatis, &c. who answereth that the Defendant hath imparked the cattel within the Rectory of the Church of C. so as he cannot make deliberance, &c.

In a Repl. it is a good return for the Sheriff to say, That the Defendant (or his Baplift, or Servant, quare) claimeth property in the goods, &c. Sed nota que si le Defend. in Repleg. claim property fausement, & issint trouve in proprietate probanda, il serra fine & imprison, Co. 8. 60. a. Fitz. proprietate probanda 1. plus hic c. 114. Br. 46. 108.

And note, That a Man cannot claim property by his Baplift or Servant, for that if the claim be found to be false, the Lord cannot be fined and imprisoned, Vide Fitz. propriet. proband. 6. & Br. Retor. 108. & Co. Lit. f. 145. b.

In a Repl. it is no good return to say, that there are no such cattel or goods found within his Baplitwick, Br. 89. 5 H. 7. 27. Fitz. Ret. 116.

But the Sheriff may and ought in such case, to return, Quod a- E. veria sunt elongata, 5 H. 7. 27.

The Sheriff returneth that the Defendant took the cattel as Baplift of such a Town, for the King's debt, and sold them &c. Or returneth that the Defendant delivered the cattel to another in execution by force of a Recovery; these are no good returns, but the Sheriff must make his usual return, Fitz. propriet. probanda 5.

Also

Also the Sheriff may return, Quod nullus venit ex parte querentis ad demonstrand. sibi averia: Br. 9. 89. Kiel. 119.

Br. Offic. 10.  
Br. retor.  
104.

The Officer which maketh or serveth a Replevin, needs not to serve it, but only of such cattel, &c. as the Plaintiff in the Replevin shall shew unto him: And yet the Officer ought to take notice what and whose cattel, &c. they be, which he shall replevy at his peril, Vide Kel. 119. pro & contra, & Fitz. Bar. 191. & Tresp. 243.

But yet by some Opinions, if in a Replevy the Plaintiff doth shew to the Sheriff the beasts of a stranger, and the Sheriff delivereth them, the Sheriff is no Trespassor herein; for the Sheriff is not bound to make Replevy, but by the shewing of the Plaintiff (and then the default is in the Plaintiff, and not in the Sheriff.) And again the Sheriff cannot by common reason take knowledge which are the beasts or cattel of the Plaintiff, and which are not, Kel. 129. vide hic c. 22. & 30. other like cases.

20 E. 4. 11.  
Br. 100.

The Sheriff returns, Quod averia elongata sunt ad loca incognita; this is a good return: But if the return be, ad loca incognita infra com. meum, the Sheriff shall be amerced for such a return; for he is to take notice of them, if they be within his County.

Br. 125.

In a Repl. at the Pluries, the Sheriff returned that the cattel are dead, and it was holden to be a good return.

Br. 125.

If he which is distrained, take his cattel again, and yet sueth a Replevy, the Sheriff may return the special matter.

If the Sheriff returneth that the cattel are in a Fort, Castle, or Park, &c. so that he could not make deliverance, this is not good, hic c. 36.

## C A P. LXXIV.

*Retorna brevis de restitution.*

**V**irtute istius brevis mihi direct. (tali die & anno, &c. infra script.) *Restitut.*  
tenementum infra script. cum pertin. reseisivi; & infranominat. T.  
& H. plenam possessionem & seisinam inde restitui, prout interius mihi  
præcipitur.

Vide hic antea, habere fac. seisinam, & habere fac. possessionem.

Retorna brevis de bonis Restituendis apse exigent, Vide hic c. 59.

*Retorna de Resummon.*

**E**xecutio istius brevis patet in quadam scedula huic brevi annex.

*Resummon.*

A. B. Armig' Vic'.

Nomina Jur. 24. Milit. unde in brevi huic scedula annex. sit mentio:  
R. M. de N. Ar.

T. B. de M. Ar. &c. (ad numerum 24.)

Quilibet Jur' præd' separatim Refum' est per H. R. & M. N. bonos summon.

A. B. Ar' Vic.

*Sanctuary.*

Ante adventum istius brevis mihi direct. J. S. infranominat' intravit Sanctuarium Sancti Petri Westm' in Com' Midd' & eodem Com' adhuc moratur, per quod corpus præd' J. S. coram Justic' infra script' ad diem & locum interius specificat' habere non possum prout, &c.

Upon a Capias, the Sheriff returned that the party was Berger 6 H. 4. f. 3. in the Church of Sarum, and abode within the Precinct of the Church, and being a Sanctuary, he therefore returned, Non est inventus, and it was holden to be no good Return, for that he might have served this Process in the Church.

# C A P. LXXV.

*Retorne de Scire Facias.*

A Scire fac. is a Writ judicial, and is usually to warn a Man to come and shew cause to the Court, why execution of a judgment which is past, should not be done, Na. Br. 163, 164.

And the Sheriff upon this Writ, is only to warn the party to appear (before the Justices,) &c. according to the Writ, and then to return the same, Ibid.

*Scire facias.*

Virtute istius brevis mihi directi, per A. B. & C. D. probos & legales homines de balliva mea Scire feci infranominat' J. S. quod sit coram Justic' Dom' Regis, (vel coram Dom' Rege, vel coram Baron' Dom' Regis) ad diem & locum infra script' ad ostend' & proponend' si quid pro se habeat, vel dicere sciat, quare, &c. (according to the matter contained in the Writ,) prout mihi interius præcipitur. Scire feci.  
Com. Banco  
Banco Reg.  
Eschequer.

Note, that in a Scire fac' to execute a Recovery, the Garnishment ought to be upon the land, 22 H. 6. 38.

Garnishment veigne del French parol Garnir, id est, to furnish. Come st action de detinue de Charters soit port envers un, & le Def. plead que les Charters fuer' deliver a luy per le Plt. & per un auter, sur certain conditions, & preia que l'auter poet estre Garny (i. e. warned) de plead ove le Plt. si le Condition soit perform on nemy, & sur ceo le brief de Scire fac' issue vers luy, & ce' est appel Garnishment; & l'auter quant il veigne pleader ove le Plt & ce' est appel enterpleader, Minsh.

**Note**

(a) Vel Ju-  
stic. nostris.  
(b) Vel co-  
ram Nobis.

Note, that the  
appearance Coram

Justic. Dom. Regis, (a)  
Domino Rege, (b)  
Baron. Domini Regis,  
Domino Rege, in  
Cancellaria, —

is in { The Court of Pleas.  
The King's Bench.  
The Exchequer.  
The Chancery.

*Retorn' de Nihil, super Scire fac.*

Nihil.

**I**nfranomatus A.B. Nihil habet in balliva mea per quod ei Scire facere possum, neque est inventus in eadem.

A. B. Mil. Vic.

Aliter A.D. & ceteri Def. infranom. Nihil habent in balliva mea per quod eis Scire facere possum, Liber. Intr. fol. 591.a.

Upon a Scire fac. against the Garnish, the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec est inventus, 1 H. 5. Fitz. Ret. 38. Liber. Intr. 591.

In a Scire fac. the Sheriff hath nothing to do but only to warn the party (hic c. 55.) and this sameth properly to be called Garnishment.

Fit. Ret. 83.

By the Scire fac. the Sheriff usually is commanded to give knowledge to the Defendant, that he appear at such a Mans suit in such a Court, at a certain day, there to do that which the Writ requireth, &c.

And in a Scire fac. the Sheriff returned Scire feci A. ad essendum coram Justic. apud Westm. secundum tenorem brevis: and for that he did not say, ad faciendum prout istud breve requirit, he was amerced, 15 E. 3. Fitz. Retorn. 108. & 119. For the Sheriff was to warn the party ad essendum, & faciendum quod breve requirit; And that Garnishment also must be by (or in the presence of) two others, and must be so returned, sc. Scire feci A. per J.D. & J. C. probos & legales homines, &c. ut supra. Vide Fitz. Retorn. 67, 77, 80, 115, 119. & hic c. 31.

But the Sheriff needs not to name or shew in what Court the party is to appear, as it sameth by the Book, 16 E. 3. Fitz. Ret. 78. ramen quære.

Where Tenant for life prayeth in aid of him in Reversion, in a Scire fac. against him, the Sheriff may return, that he was garnished in the Land in Reversion, which is terra petita, 35 E. 3. 26.

In a Scire fac. the Sheriff may garnish the party, by his person, or by his Lands or Goods as it seemeth, 32 H. 6. 13. Kitch. Ret. 54.

Sur appar.

Virtute, &c. Scire feci infranomatus J. S. & J. D. quod sint coram Justic. Domini Regis infrascripti, ad diem & locum infracontenti, ad respondend. R.H. infranomatus.

Adaudiend.  
Record.

Virtute, &c. Scire feci T. A. & E. uxori ejus infrascripti. (per A. B. & C. D.) quod sint coram Domino Rege, ad diem infrascripti ubicunque, &c. ad audiend. record. & processum, unde istud breve facit mentionem; Et ulterius ad faciend. & recipiend. (omnia & singula) prout istud breve exigit.

Virtute

*Vers Exec.*

Virtute, &c. Scire feci, *W. B.* Administrat' sive Executor' bonorum & catall' quaz fuer' *T. P.* infranomin' per *W. G.* & *G. K.* probos & legales homines de ball' mea, essendi coram Domino Rege, (vel Justic') ad diem infranom'. Neq; sunt plures Administr' aliquorum bonorum & catall' quaz fuerunt ejusdem *T. P.* in ball' mea, quibus aut cui ad præsens scire facere possum.

Nulli sunt Executor' de *E.* infranom' neque admin' bonorum & Catallorum quaz fuerunt ejusdem *E.* Nec hazred' neque tenent. terrarum & Tenementor' quaz sua fuer' in Balliva mea, quibus aliquo modo Scire facere possum: **this is good.**

*Aliter.*

Virtute, &c. Scire feci *T. V.* infranominat' quod sit coram Just' infra-script' ad diem & locum infracontent' per *J. S.* & *R. G.* ad faciend' ea quaz istud breve in se exigit & requirit, &c.

*In Cancell.*

Virtute, &c. Scire feci *W. C.* militi infranom' quod sit coram Domino Rege in Cancellar' sua ad diem infracontent' ubicunq; tunc fuerit in Anglia, ad ostend' & proponend' prout istud breve in se exigit & requirit, per *J. M.* & *W. D.* probos & legales homines ball' mei, juxta form' hujus brevis. Co. 1. 161 a

Virtute brevis istius mihi direct' 12. die Aprilis, Anno Regni dicti Domini Regis vicesimo supradict' per *J. B.* gener' & *T. W.* gener' probos & legales homines de Balliva mea Scire feci eidem *Tbo. P.* & *Marg.* essend' hic modo ad hunc diem, ad informand' dictum Dominum Regem & consilium suum, prout breve præd' in se exigit & requirit, ac prout per breve illud mihi præceptum fuit.

Scire feci eidem *J. S.* essendi coram, &c. ostens. in forma præd' per *R. F.* & *T. G.* &c. Liber Intr. 217, 218.

**The Sheriff may return Tarde, &c. in a Scire Fac. Libr. Intr. 458. b.**

**In a Scire fac', It is a good return that the party is dead, Br. 125. Fitz. Retor. 69. Br. Recog. 2. Libr. Jur. 458. b. & 591. a.**

**In a Scire fac' to have return of Cattel, after the Return awarded, the Sheriff may return that the Cattel are dead, 13 R. 2. Br. Averment 36.**

**In a Scire fac. against a Parson of a Church, the Sheriff returneth that the Parson had Resigned, &c. This is good. Hic cap. 55.**

**In a Scire fac. against an Abbot, the Sheriff returned that he was Deposed; this was a good Return; for it was as much as if he had returned him dead, 1 H. 6. 2. 2 H. 7. 10. Fitz. Retor. 1.**

**In a Scire fac. against the Husband and Wife, it is no good Return to say they are Divorced, See hic cap. 36.**

**The Sheriff returneth Scire feci heredibus & terræ tenent' without naming the Heir, or Terr-tenants, by their proper names; and the Sheriff was therefore amerced, 41 E. 3. Fitz. Retor. 69.**

**In a Scire fac. the Sheriff returned Scire feci, A. B. infranom' per H. H.**

H. H. & T. D. without these words, Probos & legales homines, &c.  
Vide hic c. 36.

Upon a Scire fac. &c. the Sheriff returneth, Vobis certifico; or, Scire feci quod sit coram vobis, &c. This word vobis, in both Cases shall be referred to the Justices mentioned in the Writ; And yet it were better if the Return were Vobis Justic' infrascriptis, &c.

In a Scire fac. to execute a Judgment, or Fine, the Sheriff ought to return the Names of the Summoners and Depoys, Br. Retor. 86.

In a Scire fac. L. B. Magistro Aulae de C. in Cantabr. & Scholaribus ejusdem; the Sheriff returned, Quod Scire fecit Magistro, without saying L. B. not speaking of the Scholars, and it was holden void.

In a Scire fac. E. Prioresse de W. the Sheriff returned, Scire feci Prioresse de W. without saying E. Prioresse, and it was void.

If the Sheriff shall return Garnishment (in a Plea of Land) whereas no Garnishment was made, an action of Deceit lieth against the Sheriff, &c. Stat. 2 E. 3. cap. 17.

In a Scire fac. against two, the Sheriff may not return that one of them was Garnished, and that the other Nihil habet, &c. For although he hath nothing, yet the Sheriff ought to have garnished him by his person, 1 H. 5. 13. Kitch. 54.

In a Scire fac. against two, the Sheriff returned Scire feci modo & forma prout, &c. And it was holden good, though he returned not severally Scire feci, 2 H. 4. 14.

Infranom' A. D. Nihil habet in Balliva mea per quod ei Scire facere possum: Neque est inventus in eadem: This is a good Return upon a Scire fac. against the Garnishee; the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec est inventus, 1 H. 5. Fitz. Retor. 38.

Upon a Scire fac', Two Nihil returned, counterbail a Scire feci, See Br. 101.

Return Scire fac. versus Clericum, vide Plus hic c. 36 & 55.

## C A P. LXXVI.

*Retorne brevis de seifina.**Brief de seifin.*

**V**irtute istius brevis mihi directi vicesimo die Octobris anno Infrascript. habere feci infranominato N. S. plenar. seifinam de & in tenement' infrascript' cum pertinentiis, prout interius mihi præcipitur.

*A. B. Ar. Vic.*

See plus in Retorn. de habere fac' seifinam, hic fol. Et Retorn. de Seifin in Dower.

Note that in such Cases, the party which recovereth Dower, &c. cannot enter, but must first have seifin delivered to them by the Sheriff, Flo. 529. b.

And the Sheriff may put the party in possession of seifin of a House or Land by a Twig, Clod, or the like.

Also if a Man recover Rent, the Sheriff may put him in Seifin thereof by Parol, or by any parcel of the Land out of which the Rent is issuing, &c. See hic antea Retorn. de Habere fac. Scifinam. Fitz. 179. b.

In Writs of Seifin, it is no good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Writs suppose to be Tenant, Flo. fol. 14.

*The Return of a Significavit.**Significav'.*

**V**irtute istius brevis mihi directi, cepi corpus infranominat' A. B. cuius quidem corpus remanet in prifona Dom' Regis castri sui C. sub salva custod mea, donec Sancta Ecclesia tam de contemptu quam de injur' ei illat' ab eo fuer' satisfact', prout istud breve in se exigit & requirit.

*A. B. Armig' Vic'.**The Return of a Significavit with Proclamation.*

**I**nfranominat' A. B. non est inventus in Balliva mea, sed virtute istius brevis mihi direct' in pleno comitatu meo tent' apud Castrum Cantab' in comitatu infrascript' decimo quinto die J. anno infrascript' publice proclam' feci quod præd' A. B. infra sex dies proxim. post proclamationem illam, corpus suum reddat in forma infrascript' prout brève istud in se exigit & requirit.

*A. B. Ar' Vic'.**Secunda*

## Secunda Superoneratione.

11 E. cap. 8.

By the Statute 11 E. 1. upon a Writ de Secunda Superoneratione *Secunda Superoneratione.* *pastura*, the Sheriff in the presence of the Parties being summoned (if they will come) shall enquire upon the second surcharge, which if it be found, it shall be returned (before the Justices) under the Seal of the Sheriff, and the Seals of the Jurors.

Nota que al Common Ley si certain Tenants ussent ewe Common Appendent in Common Wast, & un des Tenants ust mise in le Common plusors beasts que il duist, les auters Tenants averont brief de Admeasurement de pasture pur luy admesurer. Et sil apres cel Admeasurement voiet auterfois surcharge le Common, les auters Tenants averont leur brief de Admeasurement, sicom: ils aver. de le premier Surcharge.

Issint sil ust surcharge le Common xx foits, ou plus, il n'avera greinder punishment que sil n'aver. surcharge forsque 1. foits: Et pur ceo (& al intent que homes serra le plus tost garny de fair perde as autres) le Stat. de Westm. 2. cap. 8. done remedy pur ceo brief de Secunda Superoneratione, in tiel manner.

Si le premier Admeasurement fuit fait devant les Justices, donq; (si cestuy que un foits adestre issint admeasure, en apres sil auterfois surcharge, de cel second Surcharge) les autres Tenants que sua le premier brief avera un brief Judicial, &c. direct. al Vic. luy Commandant que il aler allieu, &c. pur Enquérir de cel. 2. surcharge: Et si ceo soit trove, le Vic. Return. ceo in le Common Place, desoub son Seal, & les Seals de les Jurors.

Mes le Vic. doit fair cel Enquiry in le presence del parties, sils voil vener.

Et pur ceo le vic. doit Summon ou garnier les parties, d'estre devant luy al temps de son enquiry; Et la ils averont leur challenge al Enquest (sc. a les parols, ou al Array.) N. Br. 73.

Mes si le premier Admeasurement fuit fait in le County Court, donque apres le second surcharge, les autres tenants que sua le primer brief devant, avera de cel. 2. surcharge, un brief Original, (que issira hors del Chancery) & ceo brief auxi commander le vic. de aler in person al lieu, &c. pur Enquérir de ceo second superoneration, & des avers mise in le Common ou pasture, ouster le due Number que il doit aver, ou per le value del eux.

Et icy le vic. serra charge (al fine del Ann. in le Eschequer sur son Accompt; &c.) car ceo brief Original serra inrol, & le transcript serra mise in le Exchequer, &c.

Mes si cel Enquiry fuit sur brief Original (que n'est que un Commission al vic.) les parties ne serra mie garnies ou Summon, sicome ils serra quant le brief est Judicial.

Nota ou le Stat. voet, Si le (premier) admeasurement fuit fait devant les Justices, &c. Ceo est d'estre intend, quant le brief de Admeasurement est remove hors del County en Common Bank, per un Pone, car il est un brief vicountiel & nient Retornable, &c.

Et ou le Stat. voet, si tiel Admeasurement soit fait in le County, &c. ceo est lou il n'est pas Remove, mes demur la: Et ceo serra determine la.

Mes si le brief ne soit remove, mes demur en le County, la le Tenant ne poet pleader Joynancy, Ne poet voucher a garr. Ne avera le view ou autres tiels advang.

And note, that by the form of the Writ de Secunda Superoneratione, the Sheriff in both Cases ought in proper person to go to the Pasture or Ground surcharged, Fitz. 162. c.

But yet if he cometh to the place, &c. and then causeth the Jury to see the same, and to see the number of the Cattel of the Defendant which are put therein, it seemeth he may make his Enquiry elsewhere.

And if upon such Enquiry it be found against the Defendant, he in both Cases shall not only yield damages to the other parties, but also shall forfeit to the King all the Cattel which he put into the Common or Pasture, above his due number (after Admeasurement once made;) And the Sheriff upon his Accompt shall be examined upon his Oath, how many Cattel of the Defendant he found in the Pasture above the one number; and shall be charged to answer them, or their price, to the King, Stat. Westm. 2. cap. 8. Fitz. 326. &c.

And so in this Writ de Secunda Superoneratione, whether it be Judicial, or Original (ut supra) this order is to be observed by the Sheriff, i. e. when he hath assembled the 12 Men (or Jury,) the parties are to shew and deliver their evidence and proofs, and according as the Jury shall find, so shall be done.

And there shall be Indentures made of their Enquiry, and the Seals of the Sheriff and of the Jurors shall be put thereto (as to other Enquiries.) And this the Sheriff shall Return before the Justices.

*Nota, que le value de tiel Cattel ove queux le Pasture fuit surcharge, serra Escreate in le Eschequer, per les Justic. si fuit devant eux.*

And the Sheriff may remove or drive away from off the ground, the Cattel so surcharging; and may seise them for the King as forfeit, and so keep or sell them, and answer the price.

## C A P. LXXVII.

*Retorn. Brevis Orig. in Transgress. si defend. sit insufficiens.*

**P**leg. de prosequend. { *J. D.*  
   *R. R.*

*Trespals.*

And this return the Plaintiffs Attorneys use to make, See hic cap. 56.

Infranominat. *H. B. & C. D. nihil habent in balliva mea per quod Attach. (vel distring.) possunt, (or potest, if it be but against one Defendant.)*

And if there be more Defendants than two, then you must name but one, & ceteri defen. infranominat. nihil habent in balliva mea, per quod attach. possunt.

In trespals, Nihil habet, &c. is a good return, without saying, nec habuit post receptionem brevis; or nec habuit die quo, &c. Fitz Ret. 30.

But if the Defendant be sufficient, then the Return may be thus:

Pleg. de prosequendo { *J. D.*  
   *R. R.*

*Vel sic. Infranom. H. B. (the Defendant) { A. C.*  
   *Attachiat. est per Pleg. { B. H.*

*Aliter.*

Infranominat. *H. B. Attachiat. est per unum bovem precij xx s. Car le Attachment poet estre per Pledges ou per Biens, Vide hic cap. 51.*

In Trespals (sc. Capias agard) The Plaintiff Returns, Cepi Corpus, Fitz. Retorn. 71. & Attorn. 9, 10. & 54.

*Retorn. brevis ad Inquirend. de dampnis in Transgress.*

Executio istius brevis patet in quadam inquisitione huic brevi annex?

*Cantabr.*

**I**nquisitio, &c. qui dicunt super Sacramentum suum quod *W. B.* in dicto brevi nominat. sustinuit dampna occasione transgr. in eodem brevi spec' ad 20 s. & pro misis & custagiis suis per ipsum circa sectam suam in illa parte apponit. 20 s. In cujus rei testimonium, &c.

*Aliter.*

Executio istius brevis patet in quadam Inquisitione huic brevi annex.

*A. B. Ar<sup>o</sup> Vic<sup>o</sup>.*

Inquisitio, &c. Qui dicunt super Sacramentum suum, quod *W. B. & A.* uxor ejus, in dicto brevi nominat. sustinuer. dampna occasione transgr. in eodem brevi specificat. ultra misas ac Custagia sua per ipsos circa sectam suam in hac parte appoit. ad 10 s. Et pro misis & Custag. illis ad 6 s. 8 d. In cujus rei testimon. &c.

In this Writ to enquire of Damages in an Action of Trespals, the Jury may not, nor cannot find, that no Trespals is done: Neither may the Sheriff make such a Return, Pasch. 7 Ed. 6.

But

But if the Jurp will find no Damages, the Sheriff may make his Return accordingly, &c. hic cap. 36.

## C A P. LXXVIII.

*Retorne de venditioni Exponas.*

**L**E Vic. retorne sur un Fieri fac'. Quod cepit de bonis le Def. certain biens ad valenc', &c. ad quod non invenit Emptores, Sur que issuit un venditioni Exponas retor', &c. a quel jour le Vic' retorne Quod bona non fuer' capta per ipsum nunc Vicom. Sed per quendam T. S. nuper Vicecom' predecessorem, &c. Ideo bona illa venditioni exponere non potuit; **this is a good Return:** Et sur ceo un brief suit agard a distr. nuper Vicecom': Ita quod bona illa vendition' exponat, & denarios inde provenientes deliberat' fac' prefato nunc Vicecom'. quod ipse Vic' denarios hic Coram Justic' habere possit, &c. ad reddend. prefato querenti debitum & dampna sua, &c. 32 H.6. Fitz. Process 99.

Et nora que le Anc. Vic' poet vendr' les biens in ceo case. Vide hic cap. 2. *Ayer's Case.*

*Retorne de Venire fac. Def.*

*Venire fac. Def.* Infranominat' J. B. nihil habet in balliva mea per quod potest attachiari; vel ubi eum Summon' possum.

**For upon the Venire fac' if the Defendant be sufficient, the Sheriff may return him Summoned or Attached.**

**Note, That the Sheriff upon the Venire fac. jurat. must make and indorse his Return, together with his Name, &c. in such manner as is here before set down, Co. 5. 41.**

**He must also return 24 Co. 5. 36, 37. Because some may make default, and some may be challenged, &c.**

**If any of the Jurors be misnamed either in Christian or Surname, it is Erronious, Co. 5. 42. 53.**

Virtute istius brevis mihi directi venire feci coram Domino Rege apud Westm' ad diem infracontent' J. B. sicut interius mihi precipitur.

*Alias Infranom' J. S. Attachiat' est essend' coram Justic' infra script' (tali die, &c.) ad certificandum secundum formam hujus brevis P. R. & J. W.*

*Alias. Infranom. J. S. Attach. est per Pleg. viz. { R. Den.  
Jo. Fen.*

*Nota sur ceo, si le Defendant soit retorne Nihil al primes, dunque issuer Capias, Alias, Pluries, & Exigent.*

*Mes si le Defend' soit retorne sufficient, & fait default, dunque un Distingas serra agard.*

*Retorn de Venire fac. Jurator.*

*Venire fac. Jurator.* Executio istius brevis patet in quadam panella (or in quodam panello) huic brevi annex'.

A. B. Ar. Vic.

Nomin' Jurator' inter A. B. querent', & C. D. defend' in placito Transgressionis.

Then

Then write down the names of twenty four Juroz thus,  
 A. W. de E. gener. } & sic ad numerum 24.  
 F. C. de W. Yeoman. }

If it be upon a Venire, attachatus est; if upon a distringas, Manu captus est.  
 Quilibet Jurator. prædict. per se separatim { F. D.  
 Manu captus, or Attachatus est per pleg. { R. R.

A. B. Ar' Vic.

Note, that the Sheriff shall return no Juroz without some true and certain Addition, Hic cap. 85.

He shall not return the same which had passed in a former Enquest for the same cause, Fitz. Chall. 1.

37 H. 6. f. 12. Where the parties shall admit a Visne, although there be none such, the Sheriff cannot return that there is none such, but shall make his panel de corpore comitatus. Vide plus Co. L. 125. b. & scribe hic.

And yet in Appeal, the Sheriff returneth Jur. de Vicineto de D. and the new Sheriff returned upon the Distr. that there is no such Visne, and it was holden that he might so do, 3 H. 6. fol. 58. Br. Retor. 5.

K. Return. 19. Hic. cap. 90. Note, that in a Venire facias Jurator' no issues shall be returned; but otherwise in a Distring. and Habeas corpor. And yet if upon a Distring. Jurator. the Sheriff shall return no issues, and a full Jury shall appear, it semeth to be no Error. See hic postea Issues upon Jur.

Upon a Venire fac. 12. liberos, &c. the Sheriff returned Venire feci, & non executio istius brevis: And also he returned but twelve (whereas he should have returned four and twenty) although the Writ be 12 liberos &c. and also he returned the Names of the Juroz upon the back of the Writ, and not in a Schedule, as the course is; and for these causes, he was caused to amend the same, 2 H. 7. 8. Br. 84. Hic. Retor. 34.

Retorn' de Habeas Corpor' Jurator.

Executio istius Brevis patet in quodam pannello huic brevi confut. vel annex'. *Hab. Corp. Jur. rat.*

Nomina Jurator' inter A. B. querent', & C. D. Defend. in placito debiti, &c.

Then write down the names of the Juroz thus,

A. B. de S. gener. } & sic ad numerum 24.  
 C. D. de F. gen. &c. }

Quilibet Jurator. præd. per se separatim { F. D.  
 Attach. or manu capt. est per { R. R.

Exitus eorum cuilibet — x s. (or more according to the Statutes.)

Note that upon the Return of this Writ, the Sheriff is to return Issues upon every person.

Ceo breve de Habeas Corpora. Jur. gist quant un Jury refuse de venir sur le Venire facias, &c. Vide Terms del Ley, car pur ceo que a le primer Summons de les 24 Jurors, la est nul punishment inflict sur eux s'ils ne veigne, ils raro aut

aut nunquam appareant sur le primer brief; Et sur leur default un Habeas Corpus, ou Distringas issuer al Vic. &c. Ba. V. 24.

In this Writ of Habeas Corpora; no more than two Manucaptors are to be returned. In a Decem, or Octo tales, there ought or need to be returned no Manucaptors; And yet these things are used in divers places, but are void, Fitz. Ret. brevium fol. 20. & viel Retor. Br. 141.

Note, that upon a Habeas Corpor' Jur', the Sheriff ought to return them attached, and not to return quod habet corpora eorum, 2 H. 7. Br. 84. Fitz. Retor. 34.

*Retorn' de Distring' Jurator'.*

*Distring' Jur.* Executio istius brevis patet in quodam pannello huic brevi annex'.

And then return or set down the names of the Jurozs, ut supra.

Manuceptores Jurat. præd. } J. D.  
& eorum cujuslibet. } R. R.

Exitus eorum cujuslibet — 10 s. (or more according to the Statutes) it seemeth also the Sheriff ought to return Pledges of the Manucaptors.

A B. Ar' Vic.

Upon the Distring. Jurat. the Sheriff ought to return the names of the Manucaptors of the Jurozs, ut supra Br. Retor. 86.

Also in a Distring. Jurat. per omnes terras, &c. the Sheriff ought to return issues ut supra, &c. 2 H. 7. 8. Fitz. Retor. 34.

Upon the Distring. Jurat. where there were knights and Esquires &c. and the Sheriff returned but 8 d. upon every Juroz, and was therefore amerced, 2 R. 3. fol. 13.

Upon the Distring. Jurator. if the Sheriff returneth too small issues he is punishable by the Stat. of Westm. 2. See hic cap. 89, & 90. where these issues are set down in certain by later Statutes.

But note that in the first Venire fac. Jurat. it is not material nor good to set down Manucaptors, for that by such mainprise, you shall cause the Jurozs to lose issues, which is not required at the first time.

Upon the Distring. Jurator' the Sheriff returned Manuceptores Jurator. but not the Pledges of the Manucaptors, and it was holden to be insufficient, 3 H. 7. 14. Fitz. Amend. 5.

Which then must be in this manner as it seemeth, sc.

Quilibet Manuceptorum præd. attachatus est per Pleg. J. D. & R. R.

So that upon the Distring. Jurator. the Sheriff must return the Names of the Manucaptors of the Jurozs, and also he must return Issues upon the Jurozs, and also he must return Pledges, and the Names of the Pledges of the Manucaptors, otherwise the Process is not served, Br. Retor. 86. Fitz. Amend. 5.

At the Distringas Jur. the Sheriff returned Nichil habet upon one of the Jurozs, and was therefore amerced, Fitz. Retor. 13.

At the Distring. the Sheriff returned, that as to some of the Jurozs that the Writ was served by him, and as to the rest mandavi ballivo libertatis, &c. and was therefore amerced; for that the Writ could not be served by two Ministers, Fitz. Retor. 14. hic cap. 39.

Et ceo Distring' Jurat' issera perpetualment, tanque ils appear, & pur ceo est dit Distress infinite, Fitz. 59. b. Regist. 77. b.

2 H. 7. 8.  
Br. 84.

In a Venire fac. the Sheriff returned the names of twelve only, and on the back of the Writ, and not in a schedule as the use is, Also he returned Venire feci, and not Executio istius brevis, &c. And it was agreed by all the Justices of both Benches, that they would not change the ancient course, for the mischief which might follow thereon; for if twelve only shall be returned, no man shall have a Jury without a Tales, if any be challenged; and therefore they caused the Sheriff to amend his return, upon pain of amercement, and per the Writ is, Venire facias 12 liberos & legales homines, &c.

Co. 9. 36.  
237. Sur le Venire facias forsque 12 sont retourne, & 12 de eux appear, & done verdict, ceo est error uncore ceo est remedy per les Statutes de Jeofails, sc. de 32 H. 8. & 18 Eliz.

Co. 8. 162.  
2163. Mes si sur le Venire facias nul retourne est indorse; ou que le Vicont ne mit son noyme al retourne del Jury; ou que le retourne del Jury est per le Coroner, l'ou doit estre per le Vicont, ou e converso, ceux cases ne sont remedy per aucun Statute de Jeofails, mes remain nient amendable.

20 E. 4. 11.  
Br. 114. Upon a Habeas corpora Juratorum, or Distring. Jurator. the Sheriff may return that some of them are dead, and it is good: And if a Distr. or Decem tales, shall go out, the Sheriff may return that others of them are dead, and so upon every Writ.

And note, that the Sheriff upon the Habeas Corpora Jurator. or upon the Distring. Jurator. ought to return the names of all that were in the Venire fac. 22 H. 6. fol. 45. & 37 H. 6. fol. 12. Kitch. retorn 45.

Also upon the Habeas Corpora Jurat. As also upon the Distring. Jurat. the Sheriff must return reasonable issues, which issues are now by Statutes set down in more certain. See hic cap. 90, 91.

The Sheriff may return Tarde, upon the Distring. Jurat. and upon the Decem Tales, and then the Jury shall lose no Issues, quod Nota K. 20. Fitz. Retorn. 37.

Tarde.

And thus: Quoad distringend' J. M. & alios Juratores infrascript' essend' coram Justiciariis, &c. die & loco infrascript', vobis significo quod istud breve adeo Tarde mihi liberat' fuit, quod illud propter temporis breviterem exequi non possum ad presens, Sed de novo apposui decem tales, vel octo tales (ut prox. sequent.) prout in isto brevi mihi precipitur, &c. A. B. C. D. E. F. &c.

Sed quoad decem tam milites quam alios probos & legales homines de vicineto infracontent' inter Jurator' infracontent. ponend', Executio istius brevis patet in quadam scedula huic brevi confut', &c.

Quoad distringend. R. L. & omnes alios Jurat. infrascript. essend coram Justic' infrascriptis, ad diem & locum infracontent', istud breve adeo tarde mihi deliberat' fuit, quod propter temporis breviterem executionem inde facere non potui, Sed quoad appon' Decem Tales executio inde patet in quodam Pannello huic brevi confut'.

Aliter.

Retor. de habere fac. visum. Vide hic antea fol.

Vicm.

Thel. 386. Where a Man (by his Writ) demands a Carbe of Land, the moiety thereof may be put in view, and good, 6 E. 3. fol.

11 E. 3. F. Where a Man demands a House, and ten shillings rent, if nothing be put in view but the House, it is not good, 5 E. 3.

Dower 63. If a man demands a Manor, and the tenements put in view are but a House, and a Carbe of land of another name than the Manor is, it is not good, 6 E. 3. Fitz. Brief 727.

Although there be moze put in view, than is demanded, yet it seemeth good, 18 E. 3. 22. Fitz. Brief. 357. but quare, for the contrary is holden, 19 Ed. 3. f. Br. 468. 20 E. 3. fol. Fitz. Brief 373. 375.

*Vi Laica removenda.*

Note, that upon the Writ De vi Laica Removenda, the Sheriff <sup>Br. 54, 55.</sup> ought not to remove the Incumbent, who is in possession of the Church, be he in possession of right or of wrong; for the Sheriff is only to remove the force, and is to suffer the Incumbent to enjoy his possession.

And if the Sheriff will remove, or goeth about to remove the Incumbent who is in possession, the Incumbent shall have a writ directed to the Sheriff, commanding him that he shall not remove them, &c. and if he hath removed him, that then he without delay shall make him amends; and if the Sheriff shall not do this, the party may have an Alias and Pluries, and an Attachment against the Sheriff.

*Utlary.*

*Retorne de Utlary. Vide Retorne de brief de Exigent.*

### C A P. LXXIX.

*Wast.*

*Retorne de Summons in wast.*

**P**Leg. de prosequend. *Jo. D.*  
*R. Ro.*

Summon. infranom. *J. S.* *J. P.*  
*W. F.*

*Proclam.*

**E**T ulterius ego A. B. Armig. Vic. comit. infrascript. Justic. Dom. Regis infrascript. certifico, quod post sum. præd. sc. Decimo die A. anno infrascript. existent. die dominico immediate post Divinum Servic. in Ecclesia Parochiali de B. infrascript. nulla prædicat. ad tunc ibidem existent, apud maxime usuale ostium Ecclesie Parochial' illius, infra quam quidem Parochiam sunt infrascript. jacent & existunt, proclam. feci sum præd. secundum formam Statuti in hujusmodi casu edit. & provisi.

*A. B. Ar. Vic.*

Note, That first the summons must be made upon the land wasted. Fitz. Disceit 59. And after the Sheriff must proclaim the summons at the Church dooz of the Parish where the House or Land lieth, and then he must make his return of all, as above.

The Sheriff may return the Def. Nichil, &c. in a Writ of wast: *Icy le plt. avera tiel judgment come si le brief ust estre retorn servie, 11 H. 6. Br. Retorn. 101.*

In wast the Sheriff returned the Names of some of the parties, in false Latin, as Johes where it should be Johem, but the Return was allowed for good, Fitz. Retorp. 42.

In wast at the Distring. the Sheriff returned that the Def. was distrained, and returned for mainpernor; s. two, J. S. & J. C. and for that the Def. appeared not, a Writ went out to enquire of the wast, which was found, and the Plt. recovered. And the Def. brought his Writ of Disceit against the Sheriff, for returning that he was distrained, whereas he was not, &c. Fitz. Disceit 30.

*Wast. vers 2 de tenements que ils tiendra pur vie del anc. le plt. & per lour default brief issit d' enquire del wast, & le Vic. retorn. le enquest que dit que ils ne tiendre les tenements pur vie del anc. &c. Et le Vic. serra amerce, pur ceo que il aver prise tiel verdit sans garrant, Fitz. verdit 37.*

**In**

*In waſt vers tenant pur ans le plt. recouera les biens waſt & damages, Et le Vic. retorn. que nul vient a reſceiuer le ſeiſin; Et que le def. n'ad biens d'ont il poiet leuy les damages. Icy la Vic. poiet leuier le terme del plt. in execution pur ſes damages. Fitz. Executor. 248.*

*Retorn' de breue ad inquirend. de Vaſſo.*

Virtute brevis Domini Regis mihi directi Ego *A. B.* Armig. Vic. com. præd. (tali die & anno) in propria persona mea Acceſſi ad locum vaſtatum (or ad Tenementa vaſtata) in dicto brevi nominat', & apud *S.* (ſc. **the Town wherein the Tenement or place waſted lieth**) feci Inquiſitionem, &c. prout iſtud breue in ſe exigit & requirit.

Reſiduum executionis iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

**I**nquiſitio, &c. qui dicunt ſuper Sacramentum ſuum prædictum quod *H. A. & J.* uxor ejus in dicto brevi nominat', fecer' vaſtum, venditionem, & deſtructionem in omnibus in eodem brevi ſpec', viz. permittend. unam aulam precii 40 s. duas cameras precii 3 l. & unum ſtabulum precii 20 s. eſſe diſcooperta pro defect. reparation. earundem domorum & per tempeſtates pluviales ſuper ill' dependent' devener' putrid' & corrupt', &c. contra formam provisionis in eodem brevi content'; Et ulter' Jur' præd. ſuper Sacramentum ſuum prædict. dicunt quod prædict. *A. & J.* aliud neque plus vaſtum, venditionem, ſeu deſtructionem fecer' in domibus prædictis. In cujus rei teſtimonium, &c. ut ſupra.

*A. B. Ar' Vic.*

Executio iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

Inquiſitio indentata capta apud *G.* in Comitatu *C.* (tali die & anno) coram *W. L.* Vic. com. præd. virtute cujuſdam brevis Domini Regis eodem Vic. inde direct' & huic Inquiſit. conſur' per Sacrament' *A. B. &c.* ad numerum 12 Jurator', qui dicunt ſuper Sacrament' ſuum, quod *R. M.* in dicto brevi nominat', fecit vaſtum & deſtructionem in boſco in quo in brevi præd. fit mentio, & in boſco præd. ſuccidit 20 quercos precii cujuſlibet 20 d. part' inde vendend', & partim inde aſportand, ad exhæreditationem *W. F.* inſcript. & contra form. provisionis in eodem brevi ſpecificat. Et dicunt ſuper Sacramentum ſuum quod præd. *R.* nullum majus vaſtum in boſco præd. fecit, prout eis aliquo modo conſtare poteſt; in cujus rei, &c. Vide librum Intrac. fol. 695. c. d.

Virtute iſtius brevis mihi directi, acceſſi ad locum vaſtatum in brevi iſto content', prout interius mihi præcipitur, Et reſiduum execut' iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

Inquiſitio indentata capta apud *F.* in comitatu *C.* tali die & anno, coram *A. B.* Vic. com. præd. virtute cujuſdam brevis Domini Regis ei direct', & huic Inquiſitioni annex' per Sacramentum *A. B. &c.* (ad numerum 12) qui dicunt ſuper Sacrament' ſuum, quod *J. R.* in brevi prædict. nominat' fecit vaſtum, vendition', & deſtructionem, in tenement', terris, & boſcis, in brevi præd' ſpec', viz. in permittend' aulam, &c. in brevi præd. ſpec. diſcoopert. per quod groſſum maremium earundem domor. per tempeſt. pluviales ſuper illas dependentes, putrid. devenerit, &c.

**In an action of Waſt againſt Two, a Wit went to the Sheriff to enquire of the waſt, and he returned that the one of them made the**

Wast, and not the other, this seems to be a good Return. Vide 14 E. 3. Fitz. Retorn. 111.

In a Writ to enquire of wast committed in A. B. and C. the Sheriff must return Quod Accessit ad Tenementa infrascripta: And the Inquisition taken at one of the Towns will serve for all, 34 H. 6. 49.

If the Sheriff shall return Quod Accessit ad Villam, it is not good but Quod Accessit ad locum, &c. 11 H. 4. 6.

Wast committed in a place called Reddel, The Sheriff returned Quod cepit Inquisitionem apud Reddel, it is not good, but it must be Ad locum vastatum, 40 E. 3. 20.

In a Writ to enquire of wast assigned in S. it is no good return for the Sheriff to say, quod accessit ad S. but he may say, quod accessit ad locum vastatum, or tenementa vastata, & apud S. fecimus Inquisitionem, &c. Fitz. Wast 51. 27 H. 2. 13  
Br. 2.

In a Writ of wast, the Sheriff returned, quod cepit Inquisitionem die Sabbati proxima apud R. And for that he did not shew what Saturday (it was in certain,) And also for that he said not, Quod ivit ad locum vastatum, prout breve exigit, therefore the Sheriff was amerced, and a new Writ awarded, &c. Fitz. Wast. 64. 40 E. 3. 20.  
Br. 17.

And note, that in these Cases the personal appearance of the Sheriff is requisite, Co. 4. 65.

Now, the Sheriff (in a Writ to enquire of wast) ought to go with the Jury to every Town and to every place wasted, lying in several Towns, and there ought to view the places wasted, and then to make Inquisition in any one of the Towns of all the wast done in all the Towns, and also ought to find the wast in certain, sc. succidendo, so many Oaks, & hujusmodi ad valenc. &c. Et permittendo unam aulam & unam cameram, &c. & sic de singulis, and also must find the value, See Br. Wast. 17. & Fitz. Wast 51. 34 H. 6. 44  
Br. 16.

And yet where the wast is assigned in two or more Towns, the Sheriff may cause the Jury to go and see the wast in each Town, and may make his inquisition in one of the Towns only, or in any other Town twenty leagues from the place wasted, as it seemeth by the opinions of Thirne and Hanke, quare tamen. 12 H. 4.  
Fitz. Wast.  
62.  
Br. Wast 68  
Br. Rediff.  
5. Co. 8.  
152.

For by other opinions, the Sheriff in proper person, and at the place wasted, must enquire thereof; And if the Sheriff shall enquire of the wast in any other place (where it should not be) and shall there make this enquiry, although it be in his own person, yet it is erroneous and void. Vide 16 E. 3. Fitz. Retorn. 82. Where the Sheriff returned; quod accessit ad loca, & bosca vastata, & cepit inquisitionem, but for that it appeared by the Inquisition that it was taken at H. which was none of the places, nor Town, &c. therefore although that the Sheriff came to the places, and that the Jury went and saw the wast, yet for that the Inquisition was not taken there, the Sheriff was amerced, and a new Inquisition taken, &c.

The Sheriff in this Writ to enquire of wast, which was assigned in two or three Towns returneth; quod virtute brevis predicti in villa infrascripta cepit Inquisitionem, or he returneth Inquisitio capta apud A. (being one of the Towns) and it appeareth not whether he (or the Jury) came to all the Towns, and therefore such returns are not good, Br. Wast. 17.

For in such cases the Sheriff ought to make his return, Quod virtute brevis, &c. Accessit ad loca or tenementa vastata, scilicet, to all the Towns (in which the wast was assigned) and at A. (being one of the Towns) fecit inquisitionem, &c. 14 H. 6.  
Fitz. Wast.  
Br. Wast 17

Oz the Sheriff may return, quod accessit ad ambas villas, &c. and that he caused the Jury to go and see the places wasted; but he may return the Inquisition to be taken at one place only, Br. Retorn. 39. And note, that if any of the Jurors have made the view, that is sufficient, Old N. Br. 172.

Note, where the Sheriff shall do his Office well in one Town, and not in the other Town (in this Writ) a new Writ must be awarded, and all shall be enquired of de novo, for all the Inquisition must be made all by one and the same Enquest, and all at one time, the opinion of Thirne. 12 H. 4. fol. 3. Br. Retorn 39. & Wast 68.

Note, that when the Sheriff hath made such his Enquiry of the wast, he must return the Inquisition before the Justices of the Common Pleas, and the single value of the wast; Et donques les Justices taxer cel wast accordant al Statute de Glocester.

Upon a Writ to Enquire of wast, the Sheriff returned that the Jurors were charged before him, and after departed in despite of the Court, without giving up any Verdict: This return was holden hood; and an Attachment was awarded out against the Jurors, &c. Fitz. Attach. 6. Quere if the Sheriff might not have assessed a fine upon the Jurors for such their departure, Vide hic cap. 64.

Upon this Writ to enquire of wast, the Jury may well find that no wast is done, (if the truth of the matter be so, for otherwise they should be perjured;) Otherwise it is, if the wast be confessed, there the Jury cannot find that no wast is done, Neither may the Sheriff make such a Return, per Brown, & Portman Justic. Pasch. 7 E. 6.

It seemeth by Br. Fitzh. that the Sheriff in this Writ to enquire of wast, may enquire of wast by the oath of six or eight persons, and is not bound to take twelve persons, for that this Writ is awarded by office of the Court, to enquire, &c. Fitz. 107. c. But the contrary was holden Ann. 7 E. 6. 1c. That in such case, the Sheriff ought to make his Enquiry by 12 at the least; by Brown and Portman Justic.

*Sur tiel Inquisit. le def. poiet doner evidence; Et les Jurors poient trouver pur le def. que nul wast est, Co. l. 335.*

*Sur tiel Inquisitions prise devant le Vic. le Def. poiet venger, & aver son challenge (devant le Vic.) al Array; Et deo coment que le Inquisition soit prise per default. Auxi le def. poiet aver Atteint, coment que il nest que Enquest de Office, 2 H. 4. 3. Fitz. Atteint 13 Br. Chall. 27. que le party poiet challenge pro affinitate; N. Br. 113. Auxi pur challenge al testes quere, Eo que le verdict est done per le Jury, & nemy per lestestes, 23 Ass. Br. Chall. 115.*

*Nota, que al Common Ley, la suit un Prohibition de Wast, envers tenant per le Curtesie & in Dower, & envers le Gardein in Chivalry. Et le Stat. de Mag. Carta cap. 4. confirme le Common Ley envers le Gardein. Apres le Stat. de Malreb. cap. 23. done auxi un Prohibition envers le tenant a terme des Ans, s'ils font wast (come envers le Gardein, ou tenant in Dower,) Mes in cel Prohibition home ne recouvrera forsque single damage al Common Ley.*

*Apres le Stat. de Glocest. (fait 6 E. 1. cap. 5.) enlarge cest Prohibition, lou il ne suit devant forsque envers tenant per le Courtesie & in Dower, le Gardian, & tenant pur Ans, Ore ceo Stat. voet que brief de Wast serra port envers tenant per le Courtesie, & tenant de vie, tenant pur ans, & tenant in Dower: Et ouster lou il recover forsque single damages devant, ceo Stat. voet que il recover treble damage & auxi le lieu wast. Mes coment cel Stat. de Gloc. ad enlarge cel Prohibition, & done plus grievous punishment que devant, uncore in cel Prohibition un ne serra punie forsque del wast fait apre le Prohibition al eux direct, mes pur le wast fait devant le Prohibition ne gist, &c.*

*Es*

*Et pur ceo le Stat. de Westm. 2. cap. 14. fuit fait, Et per cest Stat. Non fiat de cetero breve de Prohibition, sed breve de Summonitione, ita quod ille de quo queritur, respondeat de vasto facto quocunque tempore: Issint per cest Stat. prohibition est ore ouste, & in lieu de cel un Summons est done, in quel brief le def. respond. auxi pur le wast fait devant le brief purchase come pur le wast fait apres, ut dicitur, mes vide Foliambs Case, Co. 5. 115. hic cap. 58.*

*In brief de enquire de wast, le Vic. Return. mandavi ballivo libertatis, &c. qui nullum dedit responsum, and was amerced, for that he should have entered the franchise, he being herein a Judge by the Writ, Fitz. Ret. 53.*

*In brief de enquire de wast, le Vic. Return. mandavi ballivo libertat. he was therefore amerced, and the Sheriff was commanded to execute it himself, Fitz. Return. 92.*

*And so now by the Statute 13 E. 1. cap. 14. in an action of Wast, West. 2. first a Writ of Summons shall be awarded, and if the party (com- c. 14. plained of, or against whom the Writ is brought) come not in and appear upon the Summons, he shall be attached, and after the attachment he shall be distrained, And if he come not in after the distress, then upon his default, a Writ shall go out to the Sheriff of the County where the Wast is supposed to be made whereby the Sheriff shall be commanded, that in his proper person, he taking with him 12 lawful men, &c. shall go to the place wasted (or where the Wast is done) and shall enquire of the Wast done, and shall return the In- See Fitz. Wast. 45. 51, 62. quisi- tion before the Justices (and the single value of the Wast, ut sup.) and after the Inquisition returned, Judgment shall be given, &c.*

*Note, that by this Statute the Sheriff is made both a Judge and Officer, quod accedat ad locum vastatum, &c. And therefore in a Writ to enquire of Wast, directed to the Sheriff of Land, &c. within a franchise, the Sheriff ought himself to enter into the franchise, and to execute this Writ himself, and if therein he shall return Mandavi ballivo, &c. he shall be amerced, Br. Return 38 & Fitz. Return. 53.*

*And if he shall not enter the franchise and execute and serve this Writ himself, but by the Bailiff of the franchise, it is erroneous; And yet if the Sheriff shall return, quod accessit ad terram, the other cannot assign this for error, quod non accessit ad terram juxta returnum suum, for that he cannot contradict the Record. 7 H. 7. 4. Br. Officer 42.*

*Upon a Nihil dicit, in wast a writ went out commanding the Sheriff, quod in propria persona sua accedat ad terram vastat' to enquire of the damages, and it was holden good (and not to enquire of the wast, for that was confessed.) And here it is not necessary that the Sheriff should go thither in person according to the Stat. of West. 2. for that is only in vasto inquirendo, where the defendant maketh default at the distress. Dyer 204.*

*Nota auxi que brief de Estrepement gist in action de wast, & que le Vis. poet faire resistance in ceo breve, vide hic antea, cap. 58.*

## C A P. 80.

## Retorna de Withernam.

*Withernam.*

**V**irtute istius brevis, Cepi duas Ollas areas, duas patellas areas, &c. de bonis & catallis J. H. in isto brevi nominat. in Withernam, & ea W. B. intranominat' deliberari feci, habend' eidem W. B. quousque præd. J. B. catal. præd. W. B. deliberar', prout breve istud in se exigit & requirit: Et ulterius vobis certifico, quod præd. J. H. in isto brevi nominat' null' habet alia bona neque catalla quæ in Withernam capi possint, ut per quæ attach. potest juxta tenorem hujus brevis. Virtute

Virtute, &c. cepi in Withernam apud D. in Com. infraſcript. 2. vac-  
cas, &c. de averiis infranominat' J. D. Et duas vaccas de averiis R. T.  
infranominat' ad valenc', &c. Quæquidem averia præd' abinde fugere,  
& duci feci in quendam locum apud S. in Com. præd' ſalvo & ſecur'  
ibidem cuſtodiend. ſecund. exigent. iſtius brevis, ubi averia prædict. in-  
cumbent, Et J. D. & R. T. nulla habent plur', ſive alia averia ad præ-  
ſens, in balliva mea, quo ullo modo in Withernam capere poſſum, pro-  
ut interius mihi præcipitur.

Virtute iſtius brevis cepi duas vaccas, & duas boviculas, de averiis in-  
franom. R. D. & duas vaccas, & duas boviculas, de averiis T. L. quos de-  
liberari feci J. C. infranom', ſalvo & ſecure cuſtodiend', quouſque alia  
averia infra ſpecificat' iſtius J. C. prius capt', & ad loca mihi ignota  
transmiſſa, deliberare poſſum, prout interius mihi præcipitur.

Infraſcript. J. H. nulla habet averia in balliva mea quæ in Withernam  
capere poſſum, ſecundum exigentiam hujus brevis.

Infranom. J. H. nulla habet bona, Catalla, nec averia in balliva mea,  
quæ in Withernam capere poſſum ſecundum exigenc. hujus brevis:  
(Nec aliud habet in balliva mea per quod poteſt Attachiari) Nec eſt  
inventus in eadem.

Nulla ſunt bona neque Catalla in balliva mea infranom. J. H. quæ  
in Withernam capere poſſum. Et ideo præſatus J. H. manucaptus eſt  
per J. D. & R. R.

*Mes quere de ceux deux davein Retorns, & ſemblables, car ſi le Vic. ou  
Bayliſſ fait retorn, que le party Nulla habet bona, &c. ſi tiel Retorn ſoit  
fait in Bank le Roy, ou Common Bank, le Plt. avera un Capias vers le Def.  
& iſſint Proces de utlary. Sed ſi le Withernam ſoit azard in le County Court  
ſur tiel retorn fait per le Bailly le Plt. avera Alias & Pluries, & ſic infinite;  
mes nul autre remedy, Fitz. 74. c. d. Vide Dyer 188, 189. tiel Retorn.*

In a Replevin the Sheriff returned, Averia Elongata, whereupon  
there went out a Withernam, and the Sheriff returned, Quod non  
habet bona ſeu catalla infra, &c. Nec eſt inventus in eadem, And there-  
upon a Capias went out, and the Sheriff returned Cepi corpus, &  
quod languidus eſt in priſona, and thereupon went a duces tecum, and  
the Sheriff brought the party into the Court, &c. Br. 100.

Upon this Writ the Sheriff returned that he had taken the beaſts  
of the Def. in Withernam, and delivered them to the Plt. and that  
he had Attached the Def. &c. Fitz. Gage deliverance 1.

Upon the Pluries Repleg' the Sheriff returned Catalla Elongata, &c.  
and thereon the Plt. had a Withernam, to take the Goods and Cat-  
tel of the Def. ad valenciam, &c. with this claule, ſc. Et ſi Querens  
fecerit te ſecurum, tam de Clamore ſuo proſequendo, quam de averiis  
returnand' ſi, &c. Tunc pone le def. &c. Ad reſpond. tam Domino Regi  
de contemptu, quam præſato Querent. de dampnis & injuriis, &c. And  
according to the ſame Writ the Sheriff returned, Quod querens in-  
venit Plegios de proſequendo, & de Retorno habendo ſi, &c. Et quia  
non potuit repleg. Catalla primo capta, præſato querenti, juxta exigenc.  
brevis, Ideo cepit Sex hoves, &c. de bonis & Catallis def. propriis, ad  
valenc', &c. Et eos præſato querenti deliberavit in Withernam, detinend'  
ſibi quouſque, &c. and he further returned, quod def. Nichil  
habuit per quod Attachiari, &c. Dyer 188.

In Withernam, the Sheriff returned that he did not deliver the Cat-  
tel to the Plt. ſoz that he was not in the Country, Thel. 228. quære.

Alſo in this Writ the Sheriff may return Tarde. Fitz. Jour. 34.

By Bracton and Britton, the Sheriff upon a Withernam may take  
Cattel or other Goods to the double value. &c. hic.

Et

*Et per ascun autre opinions le Vic. ou Officer poet prender in Withernam 40 ou Centum averia ou plusors, Coment que le Pleint fuit sue forsque pur ou de nn tantum, Et nulla sequatur poena. N.Br. 45.*

*Ou le Vic. poet prend. les Beasts del def. in Withernam per agarde de gents de son County, Regist. 83.*

*Also if a man sueth a Replevin of Pots, Pans, or the like, pet up on a Withernam the Officer map take Oren, Hoyle, or other Cattel or Goods, Viel N. Br. 45.*

*If a Plea of Withernam be in the County (by pleint befoze the Sheriff, without the King's Writ) and the Sheriff commandeth or sendeth to the Baplist of a Franchise, to make deliberance or execution of the Writ, and the Baplist of the Franchise doth nothing there. in, Then the Sheriff ex officio suo, (without any Writ) map enter into the Franchise or Liberty, and make deliberance of the Cattel, and this the Sheriff map do by force of the Statutes made, 52 Hen. 3. cap. 21. & West. 1. cap. 17. Fitz. Wither. 2. & 10.*

Register  
81. b. Fitz.  
81. f

*See plus hic titulo Repleg. cap. 73. & 114.*

*Nota que en Replevin al plur. le Vic. retourne averia Elongata, & le def. appear, & non obstant VWithernam fuit agard, & pur ceo que fuit erroneusement, Surperledeas fuit agard al Vic. de surceasser, & que sil aver prist les beasts le def. que il eux restore, & le Vic. retourne que devant le Surperfed. a luy deliver, il aver deliver les beasts de Def. al Pls. & que le Pls. eux esloigne, issint que il ne poet eux restore al def. & c. 7 E. 4. 15. N. Br. 45.*

## C A P. 81.

### *Return of Commissions, Writs and Procefs out of the Chancery.*

*Adjournment.*

**V**irtute, &c. omnia brevía mihi deliberat. seu deliberand<sup>9</sup>, coram Judic. infrascript<sup>9</sup>, apud Westm. in Octab. Sancti Hil. returnabil<sup>9</sup> five return<sup>9</sup>, habeo coram Justic. infrascript<sup>9</sup>, apud Westm<sup>9</sup> die, &c. una cum omnibus executionibus eorundem. Et ulterius ad com. meum tent. apud Cantab. (tali die & anno publice proclam. feci, quod partes in eisdem brevibus nominar<sup>9</sup>, dies suos coram Justic. apud Westm<sup>9</sup>, ad præfat. terminum conservarent, prout istud breve, &c.

### *Certiorari.*

*Certiorari.*

Virtute, &c. Omnia & singula indictamenta R. B. infranominat<sup>9</sup>, coram Domino Rege ubicunque fuerit in Anglia, ad diem infracontent. mitto in quadam scedula huic brevi consut<sup>9</sup>.

Virtute, &c. Indictamentum illud unde in dicto breve fit mentio, una cum omnibus idem Indictamentum tangentibus, in Cancellar<sup>9</sup> dicti Domini Regis mitto, &c. Alien.

### *Certior' de Certifier Statut.*

*Certior' de Certifier Statut.* *Que il ad autrefois certifie ceo in le Chancery devant cest temps, come ap- piert per le Inrolment fait devant le Mayor, &c. cest bon Retourne.*

Fitz 144. c.

*Certiorari*

*Certiorare super Protection'.*

Virtute istius brevis Domini Regis infrasc<sup>o</sup> in Cancellar<sup>ia</sup> sua, sub sigillo meo distincte & aperte certifico, quod W. T. infranom. sub salva custod<sup>o</sup>, & tuitione villæ castri Marchiar. Dom. Regis Callie, in obsequio ejusdem Domini Regis in S. præd<sup>o</sup> consanguinii sui W. D. locum tenent<sup>o</sup> sui generali villæ Castri & Marchiarum præd<sup>o</sup> juxta formam Domini Regis literarum patent<sup>o</sup>, per quas idem Dominus Rex præfat. W. T. in protectionem & defensionem suam nuper suscepit, non moraturum, sed moram trahit in Civitate London<sup>o</sup> propriis negotiis suis intend<sup>o</sup>, &c.

*Certiorare super Protection'.**Retorn' de Commission de Rebellion.*

**D**omino Regi certifico quod tempore receptionis istius Commissionis, mihi & al<sup>o</sup> direct<sup>o</sup>, infranominat<sup>o</sup> W. W. capt. & arreat. fuit per W. S. Mil. Vic. Com. C. virtute diversorum brevium eidem Vic. direct<sup>o</sup> & Gaolæ Domini Regis castri sui C. per eundem Vic. commissus fuit, in qua quidem Gaola præfat. J. W. præfat<sup>o</sup> W. W. virtute istius Commissionis attachiari feci, prout interius mihi præcipitur, sed corpus ejus ad diem & locum infracontent. habere non possum, quia idem W. in eadem Gaola sub salva custod<sup>o</sup> dicti Vic<sup>o</sup> ob diversis aliis causis ibid. detinetur.

*Commissio de Rebell.**A. B. Commission'.*

Virtute, &c. Domini Regis in Cancellariam suam certifico, quod A. B. infranominat<sup>o</sup> coram nobis Sacrament<sup>o</sup> præstitit corporale, quod literæ patent. (unde infra fit mentio) ad manus infranominat<sup>o</sup> C. D. Tellatoris sui deventerunt; Sed per Sacrament<sup>o</sup> suum dicit quod nihil de articulis & aliis circumstant. in eisdem literis patent. specificat. coram se invent. fuit.

*Dedimus potest.**Responsum H. L. & J. D. Commiss.*

Virtute istius Commissionis nobis directæ, cepimus responsum T. D. infranominat. super Sacrament. Dei Evangelium, quod omnia in eadem responsione content. sunt vera, Quæ quidem responsio sic capta, est huic commissioni annex<sup>o</sup> una cum billa nobis similier in eadem direct<sup>o</sup>, Et omnia alia quæ in ea commissione content<sup>o</sup>, sive ad eadem pertinent, fieri fecimus secundum effectum & tenorem ejusdem, prout interius nobis præcipitur.

*Return' de Commission.**The Return of a Dedimus Potestatem to take the Oath of a Sheriff.*

See plus hic fol.

**V**irtute istius brevis nobis directi (tali die & ann<sup>o</sup>, &c. infra script.) recepimus Sacram. infranominat. A. B. Vic. Com. C. de officio illo bene & fideliter faciend. juxta formam cujusdam schedulæ præsentibus annex<sup>o</sup> prout interius nobis præcipitur: Ac prout breve istud in se exigit & requirit.

Alias.

\* Tam de officio isto bene & fideliter faciend<sup>o</sup> quam Sacram. specificat in Act. Parlamenti anno Regni Dom. Eliz. nuper Regina Angliæ primo fact. secundum tenorem hujus brevis, & schedulæ huic brevi annex<sup>o</sup> & in omnibus prout in præd. brevi præcipit<sup>o</sup>.

*W. S. & B. T. Commiss.*

D q

De

De Eligend. {

 Coronator.  
 Milites Parliamenti.  
 Burghenses Parliamenti.  
 Viridar' Forestæ.
 
} See hic antea.

*No exeat Reg-  
num.* Ante adventum istius brevis, & ante aliquam executionem ejusdem A.B. C.D. E.F. &c. venerunt coram me J.D. Vicecomite S. & manuceperunt coram me præfat' Vicecom. pro L. M. videlicet quilibet manucaptorum prædict', sub poena decem librarum, quod idem L. citra Crastinum Animarum prox' futur', versus partes transmarinas, ad aliqua dicti Regis aut aliquibus de populis dicti Domini Regis præjudicia' sive dampnosa ibidem prosequend', seu attemptand. se non divertet, Nec quicquam ibidem prosequat', quod in dicti Domini Regis, seu populi sui præjudicium vel dampnum, aut Stat. Regni nostri Angliæ everfionem cedere valeat, nec aliquem vel aliquos illuc mitter. ex hac causa: Quam quidem summam decem librarum iidem manucaptos concesserunt, & quilibet eorum per se concessit de terris & catallis suis ad opus dicti Domini Regis levar', si idem L. aliquid contra formam manucapt' præd. fecerit, seu fieri fecerit, vel attemptaver' quoquo modo. Et hæc est tenor securitatis unde interius fit mentio, Quam dicto Domino Regi in Cancell. &c. ad diem, &c. mitto.

Retorn. super breve de Ordine Milit. recipiend': See hic antea.

*Præmunire.*

Retorn. de breve de Præmunire: See hic antea.

*Retorn' de Proclamac' extra Cancellar'.*

*Proclamac'.*

**V**irtute istius brevis mihi directi publice proclamar. feci infra ballivam meam quod infranominat. H.B. sub poena legianciæ suæ coram Domino Rege in Cancellar. sua infrascript. ad diem infracentent' compareat, quod infranom. H.B. non est inventus in balliva mea.  
*Quid le Vic. fera sur ceo. Vide plus 261.*

A. B. Ar. Vic.

*Retorn' brevis de Attachment cum Proclam. in Cancellar.*

**V**irtute istius brevis mihi directi Domino Regi certifico, quod 5 die Augusti Anno Regni Domini Regis infrascript' 3. apud Cantabr. in Com. Cantabr. infraspec. Et 9 die Augusti Anno supradicto apud Lynton in Com. præd. Necnon 1 die Septemb. Anno supradict. apud *Newmarket* in Com. præd. Proclamari feci omnia & singula in isto breve content. secundum formam & effectum ejusdem brevis, prout interius mihi præcipitur. Et ulterius dicto Domino Regi certifico, quod infranom. J. S. non est inventus in balliva mea.

*Recogn'.*

*Retorn. de Recogn. extra Cancellar'.*

**E**Xecutio istius brevis patet in quadam Inquisitione huic brevi annex'.

Inqui-

Inquisit' indentat. &c. (ut ante fol.) Qui dicunt super Sacrament. suum, quod E. M. in brevi præd. nominat. die captionis hujus inquisit. fuit possessionat' de diversis bonis & catallis subsequen', viz. de frument' vocat' *Wye*, ad valentiam 10 s. de hordeo ad valentiam, &c. & de quibusdam utensiliis vocat. *household-stuff* ad valentiam, &c. Quæ quidem bona & catalla ego præfat' Vic' liberari feci præfat' R. per precium præd', prout per breve præd' mihi præcipitur; Et ulterius Jur' præd. super Sacram' suum præd' dicunt, quod præd. E. die recogn', deb. in eodem brevi specific', seu unquam postea nulla alia sive plur' habuit bona aut catall. terr', neque tementa, in Com. præd. quæ R. W. in eodem brevi nominat' liber' fac' possum. In cujus rei testimonium, &c. ut antea.

A. B. Armig Vic'.

*Retorn' securitatis pacis.*

**E**GO J. B. unus Justic. Domini Regis in Com. C. de pace conservanda *Securit. pacis.* assign. mitto coram Domino Rege in Cancellariam suam, tenorem securitatis pacis, de qua in dicto brevi fit mentio, sub sigillo meo, prout illud breve in se exigit & requirit, qui quidem tenor securitatis huic brevi est consut.

*Retorn' de supplicavit.*

**E**GO J. D. Miles Vic' Com' infra-scrip'te, Domino Regi in Cancellar' sua *Supplicavit.* certifico, quod ante adventum istius brevis A. B. infranominat' cap't fuit in balliva mea, & in prisione Domini Regis ibidem sub custodia mea detent', virtute cujusdam alterius brevis huic brevi consut', pro qua quidem queres, præfatus A. B. ante adventum istius brevis traditus fuit in balliva quibusdam B.B. C.D. B.F. & H. P. qui manuceperunt & quilibet eorum manucepit per se pro præfat' A.B. sub pœna 10 l. quod ipse dampnum vel malum aliquod H. P. in dicto brevi de supplicavit spec' infra talem diem proxim. futurum non fac', nec fieri procurabit quovismodo. Quas quidem 10 l. præfat' manucaptor concesserunt, & quilibet eorum per se concessit de terris & catallis suis & cujuslibet eorum, ad opus dicti Domini Regis levare, si dampnum vel malum aliquod eidem H. P. per præfat' A. B. aut per procuracionem suam interim eveniet ullo modo, &c. Et hæc est secur' pacis quam præfat' A. B. coram me invenit, &c.

Sub qua quidem balliva præfatus A. B. permissus fuit ire ad largum, extra prisionam prædictam, & postea ad custodiam meam non revenit, quapropter corpus præd. A. B. coram Domino Rege ad diem & locum infracontentos habere non possum. *Aliter.*

Ego, &c. Domino Regi in Cancellaria sua certifico, quod A. B. infranominatus nullam mihi invenit securitatem pacis de qua interius fit mentio, sed in prisione Domini Regis sub custodia mea ad præsens residet. *Aliter.*

Supplicavit de pace *issint hors de Banco Regis*, retorn. Octab. Michaelis, Et le def. medio tempore *trova Surety in le Chancery*, & ad Superfedas al Vic. de Surcease & sur le brief de Supplicavit le Vic. retorn le dit Superfed', Quare si le Superfed. (ou ceo retorn) serra allow; Car dicitur que Bank le Roy est altior Curia. Crompt. author. des Courts 74. & 78. & vide hic Retorn. de Corpus cum Causa.

Si Supplicavit soit direct al Vic. de arrester ascun de trouver Surety pur le Peace, Et le Vic. fait Precept a son Bayliff de causer le party de venger

*devant luy de trouver Suerty, in ceo Case si le party ne voit obeyer tiel warrant ou precept, il ne serra commit al prison, mes que le Vic. doit retorn ceo matter, Et sur cel retorn la issuer un Capias, ut dicitur. Tamen semble si le party ne voit obeyer, mes fait resistance, ou refuse de vener devant le Vic. de trouver Suerty, que le Bayliff poit imprison luy. Vide Country Justice, cap. 73.*

Also if a Supplicavit of the Peace be directed to the Sheriff, and to all the Justices of Peace of that County, and be delivered to the Sheriff, he only ought to execute it; sc. He is to grant out his Warrant to bring the party before him (alone) to find sureties for the Peace, and he is further to do therein in every behalf according as the Writ directeth him.

And by such Warrant (or Precept) the Sheriff (as it seemeth) may command his Bayliff, (or the Constable, or other indifferent person) to carry the party to prison, if he shall refuse to come before him to find sureties, &c. And yet the Writ to the Sheriff is to arrest and commit him, si coram vobis, vel te, recusaverit, &c. So that the Sheriff may (in such Case) grant or commit part of his authority to another, ut sup. But the Sheriff cannot give power to another to take this surety for the Peace; for that is a Judicial Power, which he cannot assign over, nor make any Deputy therein. 9 E. 4. Br. Deputy 20.

## CAP. LXXXII.

Retorn de Proces, extra Scaccarium.

*Retorna de Capias, extra Scaccarium.*

*Cepi tam corpus, quam terr.*

**V**irtute istius brevis mihi directi Baron. infra-script' certifico, quod cepi corpus infranominat' J. R. cujus corpus coram dictis Baronibus parat' habeo ad diem infracontent'. Necnon vicesimo die J. anno, &c. infra-script' cepi in manus dicti Domini Regis, nomine districtionis, cert' terr' & tenementa infranominat' J. R. jacen. & existen. in B. annui valoris C s. prout istud breve in se exigit & requirit.

A. B. Ar. Vic.

*Cepi Manerium.*

Virtute istius brevis mihi directi, Baron. infra-script. certifico, quod vicesimo die Marcii, anno, &c. infra-script' cepi in manus Domini Regis infra-spec. Manerium infra-script. cum pertin', prout interius mihi præcipitur: Et si sit cum Inquisitione pro anni valore, tunc sic breve præd. retorn. est: Residuum executionis istius brevis patet in quadam Inquisitione huic brevi annex.

*Aliter.*

A. B. Ar. Vic.

*Inquisit.*

Inquisitio Indentat. capta apud C. in Comitatu. præd. secundo die Martii anno, &c. Coram A. B. Ar. Vic. Com. præd. virtute brevis Domini Regis mihi directi & huic Inquisitioni annex. per Sacrament' A. B. C. D. &c. (ad numerum 12 Jurat.) Qui dicunt super Sacrament. suum, Quod, &c. (as the matter is.)

*Cantab.*

*Aliter Cepi Corpus.*

Virtute istius brevis mihi directi, cepi copus infranominat' J. S. cujus corpus coram Baron. infra-script. parat. habeo, prout interius præcipitur mihi.

Virtute

Virtute istius brevis mihi directi Baron. infraſcript. certiſico; Quod ſecundo die M. anno Regni Domini Regis infraſcript. &c. decimo nono; Ego A. B. Ar. Vic. Com. C. infraſcript. cepi, reſumpſi, & in manus Domini Regis ſeiſivi, Omnia Tenementa, ſhopas, gardina, & omnia alia pertin. virtute brevis præd. reſumend. quæ patent in Inquiſitione huic brevi conſut.

*Cepi in manus Domini Regis.*

*Retorn' de ſeiſure in Scaccar', nomine diſtriſtionis.*

**V**irtute istius brevis mihi directi ſecundo die M. anno Regni Domini Regis infraſcript. decimo nono, in manus Domini Regis ſeiſivi Manerium de S. infraſcript. cum pertin. in S. in Com. infraſcript', quod quidem Manerium eſt clari annui valoris in omnibus exit. ultra reſpriſ. 20 l. de terr' P. B. in ſchedul. huic brevi annex' nominat'; Ac cepi etiam in manus ejuſdem Domini Regis unum torment. vocat. a Petronell cum le ſlaſk & touchbox valor' 10 s. nomine diſtriſtionis, de bonis & catalis J. C. in ſchedul. prædict. nominat. prout iſtud breve in ſe exigit & requirit, &c.

A. B. Ar. Vic.

Virtute, &c. Cepi de terris & tenementis infranom. W. R. ad valenc. 1x s. quos habeo coram Baron. infraſcript' ad diem & locum infracontent', prout iterius mihi præcipitur. Et ulterius Baron. infraſcript. certiſico, quod prædict. W. nulla alia ſive plura terras neque tenementa, bona neque catalla in balliva mea habet, unde reſiduum debiti infraſcript' fieri facere poſſum, prout iſtud breve in ſe exigit & requirit.

Baron. infraſcript' certiſico quod omnia terr' & tenementa quæ fuer' infranom. N. F. (aut aliorum antecellorum ſuorum) jacent in Com. S. non in balliva mea.

*Terra jacet in alio Com.*

A. B. Ar. Vic.

Infranominat' J. E. non eſt inventus in balliva mea, nec habet ulla bona ſeu catalla in balliva mea, ſed virtute iſtius brevis mihi directi, Baron' diſtriſt. infraſcript' certiſico quod 15 die Junii anno 19 Domini Regis infraſcript. cepi in manus dicti Domini Regis nomine diſtriſtionis, 7 Meſſuag. ſive tenementa cum pertin. in M. quæ ſunt clari annui valoris 1 s. Et unum capitale Meſſuag. ſive firmar. cum pertin. in W. annui valoris quinque Marcarum.

*Aliter.*

Infranominat. A. B. non eſt inventus in balliva mea; Et ulterius Baron. infraſcript' certiſico, quod virtute iſtius brevis mihi directi, tali die & anno infraſcript' cepi in manus dicti Domini Regis unum Meſſuag. ſive tenementum cum pertin. in B. in Com. C. infraſcript. annual' valor' 10 l. ut de terris & tenementis infranominat. A. B. Necnon ſex vacas, unum Taurum, & unum ſpadonem precii in toto 8 l. de bonis & catalis ejuſdem A. B. nomine diſtriſtionis, prout mihi præcipitur.

Quæ quidem omnia bona & catalla penes me remanent invendit. pro defectu emptorum. Et idem A. B. nulla alia ſive plura bona ſeu catalla, terras ſeu tenementa habet infra ballivam meam, quæ in manus dicti Domini Regis ad præſens aliquo modo capere vel ſeiſire poſſum.

*Aliter.*

Baron. infraſcript' certiſico, quod virtute iſtius brevis mihi directi 2 die M. anno, &c. infraſcript', cepi in manus Domini Regis Manerium de S. cum pertin. infraſcript' prout, &c.

*Schedula.*

Reſiduum execut' iſtius brevis patet in quadam ſchedula (ſive Inquiſitione) huic brevi conſuta.

Inqui-

*Inquisitio.*

Inquisitio Indentat. capta apud C. in Com. præd. 2 die Martii anno, &c. 19 coram me J. H. Milit. Vic. Com. præd', virtute brevis dicti Domini Regis mihi directi, quod est huic inquisitioni annex' per Sacram. J. D. R. R. &c. proborum & legalium hominum Com. prædict', Qui dicunt super Sacram' suum quod Manerium de S. cum pertin. est annui valoris 5 l. ultra omnia onera & reprimas. In cujus rei testimonium, &c.

*In alio Comitatu.*

Manerium de S. infra spec. jacet in Com. E. & non in Com. C. ideo tenentes inde distringere non possum prout interius mihi præcipitur. *Aliter.*

Infranominat. E. S. est Vic. Com. B. & est comorans in dicto Com. B. & non est inventus in balliva mea.

Baron' infra script. certifico quod ego H. W. Miles modo sum Vic. Com. C. Ideo me ipsum distringere non possum, prout interius mihi præcipitur, Br. Proces 9. & hic cap. 20.

Infranominata Domina J. S. Nichil habet in maneriis, terris & tenementis infra script. nisi cum R. S. Milit' quem ipsa accepit in virum.

*Retorn' de Distring'.*

**W**here the party is sufficient; see how the Return shall be. Hic cap. 56.

*Aliter.*

Infranominat' R. A. Nichil habet in terris, tenementis & hæreditamentis infra script', per quod ipsum distringere possum.

*Aliter.*

Nullum tale Manerium, nec ulla terr. seu tenement. cognita per nomen de E. jacent in Com. Cant. unde tenent. inde distringere possum, prout interius mihi præcipitur.

*Aliter.*

Infranominat. J. K. & R. R. Nichil habent, Nec eorum alter aliquid habet in balliva mea; Et ulterius Baron. infra script. certifico, quod nulli sunt Executores vel Administratores bonorum & catallorum quæ fuerunt infranominat. M. K. unde ipsos aut eorum aliquem distringere possum.

*Aliter.*

Baron. infra script. certifico, quod A. B. C. D. & cæteri personæ in quibusdam schedulis huic brevi annex' nominat', nulla habent bona seu catalla infra ballivam meam unde sepecialia debita super eos onerat', seu aliquam inde parcel', fieri facere possum. Nec sunt invent. nec eorum aliquis est invent. in balliva mea; Nec sunt aliqui exec' test. sive ultimæ voluntat. præd. sepecialium personarum neque administratores bonorum & catallorum quæ sua fuerunt, nec aliqui hæred. seu tenen' terr' præd. sepecial. personar. sive eorum aliquor. infra ballivam meam quæ distringere possum, prout istud breve in se exigit & requirit.

Residuum executionis istius brevis patet in quibusdam Inquisitionibus huic brevi annex'.

*A. B. Ar' Vic.**Nihil.*

Inquisitio Indent. &c. Qui dicunt super Sacram' suum, quod A. B. C. D. &c. in schedul. huic brevi annex' nominat. sepecial. diebus & annis quibus primo debitor. devener. Domino Regi, seu unquam postea hucusq; null' habuer' bona seu catalla terr' sive tenem' infra ballivam meam quæ extendi aut appree' possint ad eorum noticiam. Et quod mortui sunt, quibus die & anno sive diebus & annis, ac ubi penitus ignorant. In cujus rei testimonium, &c. ut antea.

*A. B. Ar' Vic.*

Baron. infra script' certifico quod P. M. J. S. & T. W. in schedula huic brevi annex' nominat', nulla habent bona seu catalla, terr' sive tenem'

tenem', infra ballivam meam unde separalia debet super ipsos & eorum cujusslibet imponit fieri facere possum: sed virtute istius brevis mihi direct' fieri feci de bonis & catallis H.L. T.K. & J.B. in dict' s'chedula nominat' separal' summas super ipsos & eorum quilibet onerat', & denarios ill' coram Baron' infra'crip'te ad diem & locum infracontent' parat' habeo, prout interius mihi præcipitur. Et ulterius certifico quod J.B. E.A. & W.B. in dicta s'chedula nominat' dicunt se habere exonerationes pro separal' summis super ipsos & eorum quemlibet onerat', & pro eo accepti ab eis sufficiend' securitat', & præfixi eis diem essendi hic ad Scaccarium Domini Regis infra'crip'te ad diem & locum infracontent', prout interius mihi præcipitur.

A. B. Ar. Vic.

*Retorn' Brevis, de Quis est tenens.*

**V**irtute istius Brevis mihi directi Baron' infra'crip'te certifico quod W.B. *Quis est tenens.* & M. uxor ejus super tenentes tertiæ partis Manerii infra'crip'te in tres partes dividendum & C.A. M.E. & J.B. filiæ C.D. defunct', sunt tenent' secundæ partis Manerii præd', in tres partes dividend', & tertia pars Manerii præd' remanet in custodia Domini Regis, ratione minoris ætatis P.D. fil' & hæred' præd' C.D.

Manu'capt' prænominat'  $\left\{ \begin{array}{l} \text{Jo. Doe.} \\ \text{W.B. \& M. uxor' ejus} \end{array} \right. \left\{ \begin{array}{l} \text{Rich. Roe.} \end{array} \right.$

A. B. Ar. Vic.

Infranominat' W.B. & uxor ejus sunt tenentes tertiæ partis Manerii infra'crip'te in tres partes divisas: Et C.A. M.E. & J.B. filiæ C.D. defuncti sunt tenentes secundæ partis Manerii infra'crip'te in tres partes divisas, & alia tertia pars Manerii infra'crip'te, remanet in manibus Domini Regis ratione minoris ætatis T.B. filii & hæred' prædict' C.D. *Aliter.*

Manu'capt' prænominat' W.B. &amp; M. uxor' ejus J.D. R.R.

Retorn de Venire Fac. extra Scaccarium.

*Et ceo semble destre versus l'Officers del Corone, vel Scacarii,  
& est in nature de Summons.*

**I**nfranominatus A.B. Nichil habet in balliva mea, per quod potest Attachiari, vel ubi eum Sum. possum. *Venire fac.*

Infranominat' A.B. attachiat.  $\left\{ \begin{array}{l} \text{J. F.} \\ \text{est per pleg' viz.} \end{array} \right. \left\{ \begin{array}{l} \text{R. D.} \end{array} \right.$

*Aliter, sc. lou est suffic.*

A. B. Ar. Vic.

Exitus eorum, dim. marci.

Et ulterius, si hæc verba recitantur in brevi (necnon ad ostendendum) *Si soit Comes aut Comitissa tunc sic.*

Infranominat' R. A. nichil habet in terr. tenement' & hæreditament' infra'crip'te per quod ipsum distringere possum.

Nullum tale Manerium, nec ulla terr. seu tenement' cognit' per nomen de E. jacet in Comitatu C. unde tenent. inde distringere possum, prout interius mihi præcipitur. *Distring.*

Retorna

*Retorna de Fieri facias ubi null' additio datur aliis def.*

**B** Aron. infraſcript. certifico quod ſunt diverſ. perſonæ in Com. meo nomin. & cognominis de J. K. viz. J. K. de F. & J. K. de A. quæ non continentur in iſto brevi, Ita quod de cujus præd. J. K. &c. bonis & catall' denar. infraſcript' fieri facerem Neſcio. Ideo ad execut. iſtius brevis procedere non potui.

A. B. Ar' Vic.

*Retorna brevis ſumm' coram Juſtic. Foreſtæ. Vide hic cap. 47.*

*Foreſtæ.*

**V**irtute iſtius brevis mihi directi ſum' feci Archiepiſcop', Epiſcopos, Duces, Comit', Baron' & omnes alios liberos tenent. qui terr. & tenement. habent infra metas Foreſtæ Domini Regis infraſcript', in Com. meo; & quatuor homines, & præpoſit. de quolibet villat. infra metas ejuſdem Foreſtæ, Ac etiam 12 probos & legales homines de quolibet burgo infra metas dict. Foreſtæ tenend', qui venire debuerunt & tolebant, quod ſint coram Juſtic. infraſcript', ad diem & locum infracontent', prout interius mihi præcipitur. Publice etiam proclam. feci per totam ballivam meam tam in burgis quam in aliis vill. ac in feriis, mercatis, & aliis locis publicis quod omnes ill' qui per cartam Domini Regis nunc, aut antecell. vel progenitor. ſuorum, aut aliquo alio modo aliquas libertates ſeu Franchefias teneant, aut libertat' habere clam', & quæ Warr', quod ſint coram dictis Juſtic' ad diem & locum præd', proclam' etiam feci quod omnes attach. pro vert' aut venatione in Foreſta præd. poſt ultimum placit. Foreſtæ præd. ten' & eorum pleg. & manucapt' qui habuer' diem per manucaption' prædict. eſſend' coram præfat. Juſtic. ad ſtand. rect', & ad faciend. ea quæ ſecundum legem Foreſtæ facere debent.

Crompt. Auth. des Courts 50.

Reſiduum execution. iſtius brevis patet in quibuſdam pannel. huic brevi annex'.

A. B. Armig Vic.

*Antho. B. de C. generoſ. & ſic 24 for the Grand Jury; and twelve Le Pannel for the Petty Jury.*

*Retorn. de venditioni expon'.*

*Vendition' exponas.*

**V**irtute iſtius brevis mihi directi de die in diem venditioni expoſui illa bona & catalla ad valentiam C s. reſiduum de 8 l. quæ nuper de bonis & catallis, terris & tenementis T. F. infranominat' cepi, & inde vendidi ad valenciam 40 s. Quos quidem quadragint' ſolidos parat' habeo ad diem & locum infracontent' ad reddend. infranominat. C. D. præut interius præcipitur, tunc ibidem ſolvend'. Et reſiduum bonorum & catallorum præd. adhuc penes me remanent invendit. pro defectu emptorum ſed venditioni apponam de die in diem, & quando vend. contiger. denar. inde provenient. coram Baron. infraſcript. habeo ſecundum formam & eſſectum huius brevis.

Virtute iſtius brevis mihi directi de die in diem venditioni expoſui illa bona & catalla valenciam C s. reſiduum de 8 l. quæ nuper de bonis & catallis, terris & tenementis T. F. infranominat. cepi & inde vendidi ad valenciam 40 s. quos quidem 40 s. ad diem & locum infra-

con-

content' parat' habeo ad reddend. infranominat. C. D. prout interius mihi præcipitur. Et residuum bonorum & catall' præd. & adhuc penes me remanent invendit' pro defectu emptorum.

Aliter.

Illā bona ad valentiam viginti Marcarum infraſcript' quæ virtute brevis Domini Regis nunc nuper mihi directi cepi de bonis & catallis terris & tenementis quæ nuper fuerunt T.F. infranominat' venditioni expoſui, & vendidi, & denarios illos coram Baron' infraſcript', ad diem & locum infracontent' paratos habeo prout interius mihi præcipitur.

Aliter.

Baron' infraſcript' certiſico quod ill' Centum Oves in hoc breve ſpec' vendition' exponere non potui, eo quod adhuc remanent in manus infranomin' R. N. nuper Vic. Com. C. & nunquam mihi præfat' nunc Vic. adhuc per præfat. nuper Vic. deliberat. fuer.

*In manu le anc Vic.*

Et Vic. retor' quod bona non fuerunt capta per ipſum nunc Vic': ſed per quendam T. nuper Vic. Predeceſſor', &c. Ideo bona illa venditioni exponere non potuit. Fitz. proces.—99. Br. Retor. 15.

Aliter.

Virtute, &c. Baron' infraſcript' certiſico quod 10 die A. &c. cepi de bonis & catallis, terris & tenementis infranominat' W. ad valorem, &c. Et de bonis & catall', terris & tenementis J. D. &c. ad valorem, &c. Et illa vendition' expoſui, ad quæ nondum inveni emptores, & ideo denarios, &c.

*Nondum inveni emptores.*

A. B. & C. D. infranominati mortui fuerunt diu ante emanationem huius brevis, Nec aliqua habere bona ſeu catalla, terras ſeu tenementa in balliva mea quæ extendi & appreciar' poſſum, prout per breve illud interius mihi præcipitur.

*Mortui ſunt.*

Infranominat' A. B. & C. D. Mortui ſunt: Et quoad residuum executionis nihil per me actum eſt propter temporis breviam.

*Nihil fact' propter temp' brevit.*

*Retorn' de Scire fac'.*

**V**irtute, &c. Scire feci J. C. infranominat' quod ſit coram Baron' infraſcr' ad diem & locum infracontent' per J. S. & R. S. probos & legales homines de balliva mea; prout interius mihi præcipitur.

Aliter.

J. C. & cæteri def. infranominat' Nihil habent in balliva mea per quod eis Scire facere poſſum.

Aliter.

Nulli ſunt executor' de E. infraſcript', neque adminiſtr. bonorum & catallorum quæ fuerunt ejuſdem E. nec hæred' neque tenent' terrar' & tenement. quæ ſua fuer', in balliva mea, quibus aliquo modo Scire facere poſſum. Plus hic Cap. 75.

*Nota que le Summons del Eſchequer eſt un Scire facias.*

*Retorn' brevis Colleſt' 15 & 10 intra Scaccarium.*

**V**irtute iſtius brevis mihi directi, Scire feci infranom. A. B. ac etiam quæ ex parte Domini Regis fuerint dedi in mandat. quod prædict. A. B. circa levationem & collectionem ſextæ quintedecimæ & decimæ ſex integrar' quintedecimar. & decimar' infraſcript'. Ac obligac' ſecundum formam Stat. infraſcript' prædict. A. B. oſtendi feci ipſum ex parte Domini Regis ſigilland' & ut factum ſuum ad uſum ejuſdem Domini Regis deliberand, ſc. dedi in mandat', ſed prædict. A. B. omnino eand' ſigillare, vel circa colleſt. prædict. intendere recuſavit, & adhuc recuſat, in contemptu dicti Domini Regis, Ideo eandem obligationem ad diem & locum infracontent. habere non poſſum prout interius mihi præcipitur. Et ulterius certiſico quod Scire feci infranominat. C. D. quod ipſe circa levacionem & collectionem dict. ſextæ quintedecimæ & decimæ prædict. ſex integrarum quintarum decimarum infraſcript. diligenter intendat, Et obligationem ſecundum formam Statuti infraſcript' ab

*Colleſt' 15.*

**R r**

**eodem**

eodem C. D. recepi, & eandem in Scaccar' dicti Domini Regis ad diem infracontent' certifico, prout interius mihi præcipitur.

A. B. Ar. Vic.

*Retorn' brevis de respect' homag' al Distingas in Scaccario.*

Resp. Homag.

Manucriptores infranom. A. B.  $\left\{ \begin{array}{l} \text{Jo. D.} \\ \text{R. Ro.} \end{array} \right.$

Exitus — 20 s. or according to the value of the Land more or less.

A. B. Ar' Vic.

*Quando aliquis ostend' Vic' tall' sua.*

Ostendit tall'.

**V**irtute istius brevis mihi directi Baron' infra-script' certifico, quod firmar' infranominat' post receptionem hujus brevis mihi ostend' tall' sua, de solutione firmæ suæ interius specific', ob quod præfixi eis diem essendi coram Baron' infra-script', ad faciend' & recipiend' super tallia prædict. juxta tenorem hujus brevis, Et ideo levatio sum' interius specific' super sed' prout interius mihi præcipitur.

A. B. Ar' Vic.

*Retorn' brevis ad proclam' Vic' ad reddend' compotum suum per Coronatores.*

Proclam. vic. ad Redd. compotum.

**V**irtute istius brevis nobis directi Baron' infra-script' certificamus, quod in pleno Com. C. infra-script. tent. apud castrum C. in comitatu C. præd. vicesimo die A. anno, &c. infra-script', ac etiam in pleno comitatu prædict. apud C. præd. decimo octavo die Septembr. anno, &c. Necnon diversis vicibus postea in comitatu præd. articulatim proclamari fecimus omnia & singula articula quæ in isto brevi continent. & specificantur, prout per breve istud nobis interius præcipitur.

$\left. \begin{array}{l} \text{J. W.} \\ \text{W. R.} \end{array} \right\} \text{Coron'}$

Inquisitio.

Inquisitio, &c. Qui dicunt super Sacrament. suum, quod quibus die & anno nuper Comes H. obiit, & ubi penitus ignorant, quodque ipse nulla bona aut catalla in Com. præd. quæ capi & in manus dicti Dom. Regis extend. possunt: Et ulter. dicunt quod præd. Comes H. die quo obiit fuit seifit. in Domin. suo ut de feodo, de & in Manerio de C. cum pertin. clari annui valor' in omnibus ext' ult' repris. 25 l. quod quidem Maner. cum pertin. ante advent. istius brevis ego præf. Vic. virtute alter' brevis extra hanc cur' emanent' & ex parte rememor' dicti Domini Regis hujus Scaccarii affilat', seifir' feci in manus dicti Domini Reg. per extent. præd. In cujus rei testimon', &c.

Alias.

Vicar. infra-script. cum pertin', in manus dicti Domini Reg. existit, sede Episcop. Eliens. modo vacante.

Alias.

Quod maner', terr' & tenementa nuper D. Dom. de la War, in manus dicti Dom. Regis existunt, eo quod T. W. miles modo Dominus de la Warr, filius &

& hæres præd. D. non prosecut' est liberation. suam extra cur. dicti Domini Reg. wardor. & liberac. In cuius rei testimon', &c.

Inquisitio, &c. Qui dicunt super Sacram' suum quod *W. F.* in schedul' brevi præd. annex' nominat' mortuus est, sed quibus die & anno aut ubi, penitus ignorant, quodque *W. M.* etiam in eadem schedula nominat' est residens in London, & *J. S.* est comorans apud B. in com. C. in *R. A.* in vill' & com. H. extra com. C. & reliqui person' in eadem schedula nominat' ita vagrant & discurrunt in com. præd. quod capi & arrestar' non possunt. In cuius rei testimonium, &c.

Inquisitio, &c. Qui dicunt super Sacram' suum quod *H. S.* in schedul' huic brevi annex' spec' nulla alia sive plura habet maneria, terr', neque tenementa in com. præd. præter & ultra maneria terr', & tenementa in schedul' brevi præd. annex' spec. extend', aut quæ in manus Domini Regis seisciri possunt. In cuius rei testimon', &c.

Inquisitio, &c. Qui dicunt super Sacrament' suum quod *J. W.* in brevi præd. nominat. die caption. hujus inquisitionis fuit possessionat. de quadam dimissione pro termino viginti annorum unius Messuag', &c. in *A.* in com. præd. cum pertin. annui valoris in omnibus exit. ultra repris. 4 l. quam quidem dimissionem ego præf. Vic. die captionis hujus inquisitionis cepi in manus dicti Domini Reg. In cuius rei testimon', &c.

## CAP. LXXXIII.

*Retorna brevis extra Cur' Wardorum & Liberationum.*

**P**ost receptionem istius brevis, & ante return. ejusdem seperales denar. summæ infra script. solutæ fuerunt per seperales personas infranominat. receptori Domini Regis Cur' sua Wardorum & Liberationum: Ideo ad executionem ejusdem brevis procedere non potui prout interius mihi præcipitur.

*A. B. Ar' Vic.*

## CAP. LXXXIV.

*Retorn del Vic. sur precept del Justic. de Peace, direct al Vic. pour Enquérir de Riot, ou forcible Entrée, &c.*

**V**irtute istius Præcepti mihi directi, venire feci coram Justic. infra scriptis, ad diem & locum infra content. 24 probos, sufficientes, & legales homines de Balliva mea, prout interius mihi præcipitur.

Residuum executionis istius præcepti patet in quadam schedula huic Warranto annexat.

*A. B. Ar' Vic.*

Schedula.  
Cantab.

Nomina Jurator. ad inquirend. pro Domino Rege de quibusdam illicitis aggregationibus & Riotis, &c. apud Abb. magna commissis, Summon' ad essend' coram Justic. Domini Regis apud Linton (in Com. præd. 23 die April. Anno Domini 1623.) secundum exigent. cujusdam warranti huic schedulæ annexat.

And then underneath write down the Names of the 24 thus :

*Tho. B. de Linton.*

*R. B. de eadem.*

*J. P. de H.*

Et sic de cæteris, ad numerum de 24.

Quilibet Jurator. præd. separatim { *Jobem Doo.*  
per se attachiat. est per pleg. { *Ricum Roe.*

Exitus eorum cujuslibet 20 s.

*A. B. Ar' Vic'*

*Returns concerning the old Sheriff.*

*Cap. uslag.*

**A**Nte adventum istius brevis, J. C. miles nuper Vic. com. C. infranominat. T. D. cepit & in prisona Domini Regis penes se detinuit virtute cujusdam brevis Domini Regis dicto nuper Vic. direct', quem quidem T. D. dictus nuper Vic. una cum dicto breve ei directo, mihi J. D. mil' nunc Vic. com. præd. in ejus exitu ab officio suo deliberavit, cujus quidem corpus, ac breve dicto nuper Vic. direct' Ego præfat. nunc Vic. coram Justic. infra-script. ad diem & locum infracontent. parat. habeo, ad faciend. & recipiend. quod dictum breve in se exigit & requirit.

*Testific. Rei nuper vic.*

Istud breve prout superius indorsat. simul cum inquisic. huic brevi annex. 6 die *Ma.* anno Regni Domini Regis, &c. liberat. fuit mihi A. B. Ar. Vic. Cantab. infra-cr. per *Jo. C. milit.* nuper Vic. com. prædict. prædecessoris mei, in ejus exitu ab officio suo.

*Ceo darein Retorn doiet destre escri en Romaine Letters.*

**R**etorn. ad proclamand. Vic. ad redd. Compotum : *See antea Retorn. de proces hors del Eschequer, cap. 82.*

Retorn. de Captus per darein Vic. & minime deliberat. in exitu ab officio : *See hic antea Retor. de habeas Corpus, cap. 63.*

Retorn. de exigent inter duos Vicecom. vide hic antea *Retorn' de exigent, cap. 59.*

*Retorn, que le biens (destre vend) remain in les mains del anc. Vic. hic fol. 117.*

## C A P. LXXXV.

### Return of Juries.

**J**uries are of two sorts, sc. for Enquiry, or for Trial.

Of the first sort are Grand Juries, returned to the (Assises) or general Goal-Deliber; or for the Quarter-Sessions of the Peace.

Of this sort also are, the Juries returned before Justices of Peace, to Enquire of Riots and Forcible Entries, &c. And Juroys returned before Escheatoys, or before Commissioners of Sewers, or upon the Stat. of Bankrupts, Coroners, and Clerks of the Market, &c.

And so of Inquisitions taken before the Sheriff.

Juroys for Trial, are such as are returned when a matter is in trial between party and party.

The

The Sheriff (upon a Precept directed to him) is to summon (or warn by his Bayliffs) and to return (or cause to be summoned and returned) the Grand Jury to the Assises; the Form whereof, see antea cap. 46. For the Assises.

The Sheriff is likewise to summon (or warn) and to return the Juries for the Quarter Sessions; the form whereof, see also antea c. 47. For the Sessions.

The Sheriff is likewise to summon (or warn) and to return Juries for Enquiry before Justices of Peace (out of their Sessions) and before Commissioners, Escheators, Coroners, and Clerks of the Parker, upon their several Precepts, directed to the Sheriff for that purpose: See hic cap. 83. & 100.

42. E. 3. c. 11.  
6 H. 6. c. 2.

Sheriffs ought to array their Pannels for the special Assises six days (at least) before the Sessions of the Justices upon pain of 40 l. so that the parties Plaintiffs, Tenants, or Defendants, may have the view and Copies of the Pannels, if they shall demand the same. For Trial.

Pannel here signifieth a little part of Parchment, wherein the Jurors Names be written and annexed to the Writ: And a Jury is said to be impannelled, when the Sheriff hath entered their Names into the Pannel or piece of Parchment; Co. Lit. 158. b. Copies of Pannels.

*Mes ceo nest que un peim al Vic. que serra levy per suit, &c. Sed nest ascun cause de Challenge le Array, &c. Abr. d'Ass. 131, 132.*

Nota, *Que ceo parol Array, est le disposing ou ordering dun Jury.*

And these copies of Pannels shall be indented by the Sheriff, and delivered to the Plaintiffs, Tenants and Defendants (upon their demand) six days at least, before the Sessions, upon pain to forfeit to the King, forty pound for every default. 6 H. 6. cap. 2. *Et le party auxi recouvera ses damages. Abr. d'Ass. 132.*

*Ceo auxi semble forsque un peine al Vic. &c. Et que suffist de arrayer le Pannel d'Assises 2. jours avant les Assises; Et pur deliver Copies del Pannels 4. jours avant les Assises, Eo que les dit Stat. sont in l'affirmative, &c. 43 Ass. pl. 22. Vide Br. Pannel 10. que chescun array in Assise covient estre fait 4. jours devant.*

Rid.

Also the Bayliffs of Franchises and Liberties ought to make their returns to the Sheriff (of the names of such persons as are to be so impannelled) eight days (at least) before such special Sessions or Assises, upon pain of forty pound to be forfeited to the King for every default.

¶ 2. Fortescue speaking hereof saith thus. So soon as Suters in the Kings Courts are at issue upon the matter of the Fact, the Justices (by the King's Writ directed to the Sheriff of the County wherein the fact is supposed to be done) do command the Sheriff to cause to come before the same Justices, at a day certain by them limited, 12 good and lawful men, neighbours to the place where the fact is supposed to be done: And upon the day aforesaid the Sheriff ought to return the same Writ before the same Justices, with the Pannel of their Names whom he hath summoned thereto.

Also of those 12 some of them shall be Hundredors (or of the Hundred wherein the Town is, in which the fact whereupon the suit ariseth, is supposed to be done) Fortesc. Now how many of them must be Hundredors, see hic postea.

11 H. 4. c. 9.

Jurors in Indictments shall be lawful and liege-men, &c. and not of persons named by the Justices, but such as shall be returned by the Sheriff or Bayliffs of Franchises, without any denomination to the Sheriff or Bayliffs before made, by any person of the names, which by him or them should be impannelled (except it be by the Officers of the said Sheriff or Bayliffs, sworn and known to make the same, and other Officers to whom it appertaineth to make the same according to Law:) And if any Indictment be made (or taken) in any point to the contrary,

*Sans denomination.*

trary, the same Indictment shall be also void, revoked, and for ever holden for none.

Also if any person shall be returned or put in any Enquest, at the denomination of any other, or to serve any turn, &c. if it may so appear to the Court, they ought to remove him, although otherwise his Presentment might be good. Crompt. 128.

Vide 12 E. 3. Abr. d'Ass. 51, 52. In assise parcel del Jury fuit mise in le Pannel al preier del Plt. & ascuns al denomination le tenant; Et pur ceo que ils semble al Vic. destre probes & loyal homes & nul faver trove in le Vic. ils fuer. allow.

Auxi vide Dyer 182. Furors impose al denomination del Plt. poient estre challenge (sc. les poll poiet estre Chall.) per le def.

Whereas divers great inconveniences have heretofore been, by reason that Sheriffs and their Ministers have returned at the Assises and Sessions of the Peace, the Names of such Persons as by labour would be wilfully forsworn and perjured, by reason whereof divers persons have been wrongfully indicted of Murthers, Felonies, and other misdeemeanors; and sometimes divers great Felons and Murthers have been concealed and not presented, &c. Therefore by the Statute made 33 H. 8. c. 12. It is enacted, that all Pannels returned, which be not at the suit of any party, that shall be made and put in by the Sheriff or his Officers, before any Justices of Goal-Delivery, or before Justices of the Peace in their open Sessions, to enquire for the King, may be reformed, by putting to, and taking out of names of the persons that be so impanelled, by the discretion of the Justices, before whom such Pannels shall be returned: and that the same Justice or Justices shall command every Sheriff, and their Ministers (in his absence) to put other persons in the same Pannels by their discretions: and the same Pannels so reformed by the said Justices, to be good and lawful. And if any Sheriff or minister do not return the same Pannels so reformed, then every Sheriff or minister so offending shall forfeit twenty pound for every such Offence, the one half thereof to be to the King, and the other half to him that will sue for the same. And so of Pannels for Trial, upon a Tales de Circumstantibus granted by the Justices. See hic cap. 90.

Whereas before (by the Statute of 13 E. 1. c. 30.) none were to be put in or upon any Jury, other than those who were summoned to the same at the first.

And if the Sheriff shall return any Juroz which was not lawfully summoned, warned or distrained in that behalf, and that such person (for default of his appearance) shall lose or forfeit any issues, then the Sheriff (or his Minister, by whose default such person shall be returned summoned) shall forfeit to the Party so returned, double the value of the issues by such Juroz lost or forfeited for his default of appearance. 27 Eliz. c. 6.

En assise les Furors gage leur Ley, que ils ne fuer. Summon; mes semble que il nest ley. Vide H. 3. c. 3. Abr. d'Ass. 115.

En assise le tenant dit que les gents empanel ne fuer. Summon, & les Furors mesmes fuer. sur ceo examin, mes nemi sur Serement. Abr. d'Ass. f. 131. 22 Ass.

Si le Vic. Ou Bayliff Summon ascun destre del Jury, Et nient obstant le Vic. ne retorne eux, uncore pur default d'appearance de suffic Furors. si le Plt. testimoigne que ascun de eux queux fuer. issint Summon, sont in le ville, &c. ceo poiet estre trove per Serement del Bayliff, (sc. que ils fuer. Summon) & sur ceo ils seront jurus, nient obstant que ils ne fuer. retorne. Abr. d'Ass. 132.

Si le Vic. ou son Bayliff Summon (ou warne) ascun destre del Jury, & apres le Vic. ne retorne eux issint Summon, le Vic. serra amerce.

Roce

Reform per les  
Justices.

Nient Summon.

Note, the Law requireth that Sheriffs, and other Officers, shall be indifferent persons of themselves, and shall deal uprightly in returning of Jurozs for Trials, and therefore the Law doth not allow that the Sheriff, Under-Sheriff, Bayliff of Franchise, Coroner, or other person, to be an indifferent or meet person to empanel any Jury or Juroz, who is a (a) Party to the Suit or matter in question, or who doth (b) maintain either of the Parties, Plaintiff or Defendant in the same Suit, or is of (c) Counsel with either of them in that Suit then in issue; nor who is within the (d) distress, or (e) receiveth the yearly fee, or weareth the Livery or Robe of any of the Parties to that Suit; (f) nor who is of kindred by nature, or of Affinity by marriage, to any of the Parties to that Suit; nor who doth return that Enquest or any of the Jurozs therein, at the denomination, (g) or by procurement of any of the Parties to the same Suit, or of any other person whatsoever; nor who doth impanel that Enquest or any of the Jurozs therein, for (h) the favour which he doth bear more to the one party than to the other; nor who was an (i) arbitrator in that cause in question, and did treat and confer of the same; nor who is then (k) in Suit of Law with either of the parties to this question, or tryal for any matter of trespass, malice, or evil will; (l) nor who did baptize the Child of any of the parties to this suit and tryal, or any of the parties to the same Suit did baptize his child: all which the Law doth take as causes of suspicion of favour and affection in the Sheriff, his Under-Sheriff, or other Officers; and to be moovers to perjury, and therefore upon challenge of the array so being impanelled, and the same proved, the whole array shall be quashed.

Partiality del  
Vicomte.

Causes of Chal-  
lenge.

Challenge.

- (a) Br. 88, 89.  
(b) Br. 103.  
(c) Br. 150.  
(d) Br. 9, 121.  
158.  
(e) Br. 24, 29,  
52, 95, 96, 119.  
(f) Br. 1, 20, 53,  
101, 116, 180.  
(g) Dyer 182.  
Br. 25, 36, 184.  
(h) Br. 55, 90,  
93, 120, 184,  
197.  
(i) Br. 7, 85.  
157.  
(k) Br. 45, 52,  
(l) Br. 31, 56,  
143, 163.

Vide Co. Lit. 157, 158. plus concernent Challenges.

Nota, que les Challenges sont fait, ou al Array, ou a les Polles.

Touts tiels sont destre trie per ascun des Furors, uncore si soit devant ascun Fuors jures, donques le Court assigner Triors, mes quant ascun Furors sont jures, donques ils trier. 27 H. 8. 26. b. Finch 60. a.

Challenge al Array est quant le Fury nest indifferentment impanel; donque Challenge cu Exception est prise al Entire number.

Challenge al Polles, est quant exception est prise al ascun un, cu plusors, come nient indifferent.

Array duement fait tempore arraiaamenti, ne serra quash, coment apres ascun del eux fuer. omise, & auters retorne que ne sont indifferent. &c. Dyer 182. Mes les Polles poient estre challenge in tiel Case. Ibid.

And further, to the end and intent that all Trials might be by indifferent Jurozs, therefore the Laws and Statutes of this Realm have provided, That no Sheriff or Bayliff shall impanel any Enquest, nor put into any Jury, any persons but such as are next neighbours, and which have best knowledge of the truth, most sufficient, and most substantial people, and worthy of credit, and not suspected, nor procured, nor laboured: And he that doth otherwise, and is attainted thereupon, shall pay unto the Plaintiff his damages double, and shall be grievously amerced to the King; and besides the Sheriff stands bound thus to do by his Oath. Artic. 14.

What manner  
of Persons.

- 28 E. 1. c. 9.  
34 E. 3. c. 4.  
42 E. 3. c. 11.

Co. L. 159.

Note, that the High Sheriff by his Oath must make the Pannels himself, and that as well for Enquiry as for Tryal.

Note also, that in Writs of Assise (de Novel disseisin, de Mort danc. de Darein presentment, & de juris utrum) the Sheriff is to return the Jury the first day, and they are to appear as soon as the Defendant: But in other original Writs (regularly) no Jury is to be returned before the appearance of the Parties, and an issue joyned between them.

3f

If the Sheriff or Bayliff of a Liberty shall return a Jury contrary to the form of these Statutes, the Parties, Plaintiff and Defendant, may have their Action upon the Statute against the Sheriff or Bayliff, &c. For that the Statute is a Prohibition it self; or the party Plaintiff may have a Writ, de non ponendis in Affisis, &c. (founded upon this Statute, directed to the Sheriff, commanding him to return a Pannel according to these Statutes) and if the Sheriff will not do accordingly, the Plaintiff may have an Attachment against the Sheriff, therefore see the form of this Writ, De non ponendis in Affisis: Register 178. & Fitz. 165.

Nal Officer del  
Vicount.

Also if the Sheriff, &c. shall return upon a Jury any persons which are not sufficient to pass in the same action, &c. then such Jurors may have an Action upon the Statute against the Sheriff. Fitz. 166. d.

No Sheriff, Bayliff of Liberty, nor any other Officer, shall return in any Pannel or Jury, any Bayliffs, Officers, or Servants, to any Sheriff, Under-Sheriff, Coroner, Steward of Franchise, Warden of Prisons, or other of their Officers, upon pain to forfeit forty pound, the one half to the King, the other half to him that will sue for the same. 23 H. 6. 10.

*Uncore si le Vicount empanel ses amyes, & cosins, il nest deins cest Stat. per Eliot 21 H. 7. f. 36. a.*

Barons.

Barons and Peers of the Realm shall not be impanelled or returned upon Juries by the Sheriff, &c. when any Subject (of the Commons) is to have a Tryal either at the King's Suit, or between party and party, Fitz. 165. & Co. 6. 53. & Co. 9. 49. Dyer 315. Co. Lit. 156. b. Doct. & St. 15.

But every Baron of the Parliament (as well of the Spirituality, as Temporalty) being a party to any Action, ought to have Knights returned of their Jury, one at least, Fitz. Enquest 43. Co. 6. 53, 54. & Plo. 117. Vide 33 H. 8. Br. Jurors 48. & 27 H. 8. Br. Enquest 99. Dyer 107, 208. & Finch. 60. And so in an Attaint there ought to be a Knight returned of the Jury, Co. Lit. 156. Fitz. Attaint 69.

*Auxy Peere del Realm serra trie in appeale, per Chevalers, &c. & nemy per Pares suos, Eo que est suite le party. Auterment est sur Enditement de Treason ou Felony, la serra trie par Pares, pur ceo que est suite de Roy; Mes ceo serra intend de Seigniors de Parliament, & que sont temporal Seigniors, & nemy de spiritual Seigniors; Car Evesque (que est Seignior del Parliament) serra trie come autres gents serra, sc. per Chevalers, Esquires, & Gentlebomes, pur ceo que Evesque nest Seignior mes per raison de son Evescherye, Br. Coron. 153. Treason 2. & 29. Trial 142. & Stamf. 152.*

Clerks.

Clerks which have Lands or Tenements by descent, or by purchase, may be impanelled, returned and sworn upon Juries, as well as other Lay persons (except when they be in the King's Service) but this is now out of use. Fitz. 166. b.

*Mes si le Vicount retorne ascun Seignior sur Jury, sil ne appear, il perdera ses issues retorn, &c. Fitz. 163. a. Finch. f. 60.*

*Issint si le Vicount impanel & retorne ascun Clerk, il covient appear, &c. auterment il perdera ses issues, &c. Fitz. 166. b.*

Tenant in anci-  
ent Demesne.

Tenants in ancient Demesne (which are dwelling there shall not be returned by the Sheriff in any pannel for their Lands within ancient Demesne: but for their other Lands or Tenements which they have out of ancient Demesne, it seems they may be impanelled and returned by the Sheriff. Fitz. 166. f. 5 Co. 105.

Foresters.

Foresters, Wardors, Regardors, Agistors, nor other ministers of the Forest, the Sheriff ought not to impanel or return any of them upon any Jury or Inquisition to be taken out of the same Forest, Fitz. 167. a. Coroners,

Fitz. 167. a.

Coroners of the County, the Sheriff ought not to return them upon any Jury, or Inquisition: but upon Inquisitions to be made within their County before Commissioners, or Justices of Peace, the Sheriff may return Coroners.

Fitz. 165. d.  
166. a. d.

Persons above the age of seventy years are not to be returned by the Sheriff or Bailiff of Liberties upon Juries; For persons being continually sick, or having any continual infirmity, or being diseased at the time of their Summons. Stat. Westm. 2. cap. 38.

*Uncore si le Vic. retourn persens decrepite, ou persens ouster le age de 70 ans, ou auter tiels, quant ils veigne al Barr d'estre jure, ils n'avera mie advantage d'alleger que ils sont decrepite, ou ouster le age de 70 ans, &c. Nec serra ils excuse pur non appearing, si les Justices voil exact leur service.* Lamb. 383.

No Alien, Enfant under fourteen years of age, Clergy-men or Ministers shall be impannelled, Lamb. 383.

*Alien.  
Enfant.  
Minister.*

And yet an Enfant above fourteen years of age, ought not to be returned (by the Sheriff) upon any Jury; (Nor appearing) ought to be empannelled and sworn upon any Jury. For Mr. Littleton (div. 259.) tells us that before 21 years of age a Man shall not be sworn upon any Enquest or Jury; Et ceo semble bon Challenge per le Common Ley; mes le party n'ad aucun remedy per ceo Stat. de Westm. 2.

Fitz. 165. d.  
& 166. d.

No persons dwelling in another County at the time of the Summons shall be returned upon any Jury: But this Statute shall not extend to great Assizes, in which it behoveth many times Knights to pass, although they be not resident in the County (for the scarcity of Knights) so that they have Land within the Shire. Westm. 2. c. 38.

*Hors del County.*

Fitz. 165. b.  
166. d.

And every of these persons above named may have their Writ to the Sheriff, commanding him that he shall not impanel them: Or (without any such Writ suing) they may have their Action upon the said Statute of Westm. 2. against the Sheriff, wherein the party grieved shall recover his damages, and the Sheriff shall also be amerced to the King: See 8 E. 3. f. 30. & Regist. 179. &c.

But yet they which do purchase Charters of Exemption and Liberty, not to be impannelled in Assizes, Juries and Enquests, if their Oaths be so requisite, that without them Justice cannot be ministered (as in great Assizes, Perambulations, and in Deeds or Writings of Covenants, where they be named for witnesses, or in Attaints, and in other like cases) they shall be compelled to swear, saving to them at another time their foresaid Liberty and Exemption, Marl. 52 H. 3. 14.

Note, that he which hath a Charter of Exemption, &c. ought to shew the same to the Sheriff; and if then the Sheriff shall impanel him against the words of his Charter, then he may have his Action against the Sheriff. 18 H. 8. f. 5. b. & 30 Eliz. If the Sheriff shall return before Justices of Oyer and Terminer, Justices of Gaol-delivery, or Justices of Peace, a Pannel de Corpore Comitatus (sc. the Great Enquest) to enquire for the King, and some of them have their Charter of Exemption, yet if in their said Charter, there be not this Clause, Licet tangat nos, & hæredes nostros, they may be compelled to be sworn, for that the business and service concerns the King. Vide 72 Ass. 5. And for want of those (or the like) words in their Charter, it seemeth also the Sheriff may safely impanel, and return them, for such services for the King. Crompt. 128.

Also where an Alien is party to any Trial, the Enquest shall be De medietate lingue, 28 E. 3. cap. 13.

*Alien.*

No Indictor shall be put in Enquest upon deliberance of the Justices of Felony or Trespas, if he be challenged for the same cause by him which is indicted, 25 E. 3. 3.

S f

No

No Indictments shall be made by any persons which be outlawed, or which have fled to Sanctuary for Treason or Felony, but by Enquest of the Kings liege and lawful people. 11 H. 4. cap. 9.

*Probi & legales.*

So that by this Statute of 11 H. 4. c. 9. the Sheriff is appointed to return none upon any Inditement, but such as are Probi & legales homines: probi, sc. such as are not discredited (or disabled in their credits) in Law by Attainder in Conspiracy, Attaint, Decies tantum, Perjury, Subornation of Perjury, Concealment, or such like: Legales, sc. such as are not outlawed, absured, condemned in a Premunire, or attainted of Treason, Felony or such like.

Likewise Jurors warned upon Trials, &c. they ought (by the Statute made 42 E. 3. c. 11.) to be most worthy of Credit, and not suspected: And by the Statutes made 35 H. 8. cap. 6. & 27 Eliz. 6.) they ought to be Liberi & legales homines. In ancient time they were twelve Knights. Co. L. 155. b.

Sir Ed. Coke upon Littleton, fol. 155. telleth us, that by the Law every Juror returned for the trial of any issue or cause; ought to have these three Properties, viz.

1. To be dwelling most near to the place where the question is moved, or where the Lands do lie.
2. To be most sufficient, both for understanding, and competency of Estate.
3. To be least suspicious, but only indifferent, and then he is accounted Liber & legalis homo, and that otherwise he may be challenged.

Also they must have sufficiency of Freehold in most cases, And this Freehold must be in Fee-simple, Fee-tail, or for Life.

It must be in his own Right, or Right of his Wife.

Although it be upon Condition it sufficeth. Co. L. 156. b.

They must have Freehold in that County where the cause of the Action ariseth. Ibid.

*Kindred.*

Also the Sheriff, nor his Officers, shall not do well to return or impanel wittingly upon any Jury, any person who is near of kindred or affinity to either of the parties to that suit.

*Servant.*

For any person who is Servant to either of the parties.

*Deins distr.*

For any person who is within the distress of either of the parties to the suit.

But all the whole Jury must necessarily be of the Shire, and some of them must be of the Hundred where the Land in controversie lieth, or where the Fact is supposed to be done.

And if there be no such Venue (Place or Town) as is laid, &c. yet if the parties do agree that there is such a Venue, the Sheriff cannot return *Nul tiel Venue*, but he ought to return the *Pannel de Corpore Comitatus*, &c. Fitz. Retor. 27.

In an Action of Trespas laid to be done in D. the Def. confesseth, that there is such a Town; here, upon the *Venire Facias*, the Sheriff cannot return that there is no such Town as D. within the same County, for that it were contrary to the confession of the party. 3 H. 7. 12. Br. Retor. 87. Hic cap. 36.

*Hundreds.*

Upon the trial of any issue joyned in any of the Kings Courts at Westminster, the Sheriff (or other minister to whom the making of the Pannel shall appertain) shall return in every Pannel upon the *Venire facias*, six sufficient Hundreds (at the least) if there be so many Hundreds within the said Hundred where the Venue lieth, upon pain to forfeit for every Hundred that shall be omitted in such return of the number aforesaid twenty shillings.

And

35 H. 8. c.  
3 E. 6. c. 23.

And yet if there had not been so many sufficient Hundredors within the same Hundred, if there the Sheriff had returned them out of the next Hundred adjoining, it seemeth to have been allowable. Vide 50 E. 3. fol. & Abr. d' Ass. fol. 50. & 52. & 2 H. 4. fol.

A Juror may be challenged for that he hath nothing within the Hundred; And yet after that so many be sworn of the Hundred as the Statute requireth, it seemeth that the rest shall not be challenged in that behalf. Na.Br. 174.

But by the Statute of 27 Eliz. cap. 6. upon the trial of any issue joyned in any personal action, if two sufficient Hundredors do appear, it is sufficient, so as no further challenge for the Hundred shall be admitted.

Note, that Hundredors be men impannelled, or fit to be impannelled upon a Jury for any Controverſie, and dwelling within the Hundred where the Land lieth, which is in question, &c. whereby they (by intendment of Law) may have Notice de rei veritate, or better knowledge of the Cause.

Also the word here before, *Vicinus*, *Vicinetum* (coming of this word *Vicinus*) signifieth a Neighbour or near place, sc. the Sheriff, &c. shall return &c. six Hundredors, &c. if there be so many within the Hundred where the *Vicinus* lieth, that is, within the Hundred or place where the demand is made; Or within the Hundred where the Town is, in which the fact whereupon the suit ariseth, is supposed to be done, for that *vicinus facta vicini præsumitur* (Vide Co. L. 125. & 158.)

If he hath Freehold in the Hundred, though but half an Acre, it sufficeth. Co. L. 157. See Co. L. 157. a. plus & Cook hic.

And if they have nothing within the Hundred, and yet dwell within the Hundred, and have sufficient Lands out of the Hundred, the Sheriff may return them. But if they have sufficient Lands within the Hundred, and dwell out of the Hundred, it seemeth the Sheriff may not return such. Vide P. 3 H. 6. fol. Abr. d' Ass. fol. 53. *quære tamen*.

A Juror was challenged for that he was no Hundredor (or had nothing within the Hundred) at the day of the *Venire fac.* returned but it appeared that he had at the day of the Return of the *Distring.* Jurator, and by Justice Harper and the Clerks he was to be sworn, but Dyer Justice held the contrary. Dyer 316.

But if the Juror were a Hundredor at the *Venire fac.* returned; he shall be sworn as a Hundredor, although that after he be returned and before he be sworn, he selleth his Land, or changeth his dwelling, for that by his selling, or removing, his Notice is not gone nor impaired Dyer 316.

27 Eliz. c. 7.  
39 Eliz. c. 8.

No Sheriff, Coroner, or other person to whom it shall appertain to make return of any *Writ*, shall return any Juror dwelling out of liberty, without the true addition of his dwelling place, or of the place of his abode (at the time of the said return, or within one year next before the making of such return) or some other addition by which the party returned may be known, upon pain to lose five mark to the King, and five marks to the partygrieved. Addition.

27 Eliz. c. 7.

And the Bayliffs of Liberties, or their Deputies, shall certifye and deliver under their hands to the Sheriff or his Deputy, the names of all persons within their Liberty to be returned upon any Jury, with the true addition of their dwelling place, or of the place of their abode, &c. as foze said.

And the Sheriff, &c. shall not return any Jurors within any Liberty with other addition than such as shall be delivered to him by the Bayliff of the said Liberty, or his Deputy, certified under his or their hands, as aforesaid.

Also no extract of Issues against any Juroz, returned as aforesaid, shall be delivered out, received, or put in ure, without such addition as is put in the original Pannel or Tales wherein such Juroz shall be so returned.

Ibid.

And no Under-sheriff, Bailiff, or other Officer or person whatsoever shall collect, levy or gather any Issues so extracted, or any other person or persons, than such person and persons, as by vertue of the said Writ is of right charged or chargeable with the payment of the said Issues, upon pain that every Sheriff, Clerk, or other person offending contrary to the true meaning of this Statute, shall forfeit to the King five marks, and to the party grieved five marks.

Ibid.

## CAP. LXXXVI.

Their Number.

**N**Ow to shew how many the Sheriff must return upon a Jury, note that the Writ of Venire Facias (for the impannelling of Juries) runneth in this form: Rex, &c. Præcipimus, &c. quod Venire facias coram, &c. duodecim liberos & legales homines, &c. And yet the Sheriff is always to warn, and must return 24. lest there should be wanting by reason of Challenges, or lest peradventure any might be sick, or have other just cause of absence. Vide Co. L. 155. But in former times it seemeth that Sheriffs used to return unreasonable numbers, to the grievance and great trouble of the people: And therefore it was enacted by the Statute of Westminster 2. c. 38. which was made anno 13 E. 1. That in one Assise no more shall be summoned, or returned upon a Jury than four and twenty.

*Si le Vic. retourn plusors que 24 Recognitors in Assise, semble le brief abater, 8 H. 4. f. 20. & 10 H. 4. 8. Mes ceo nest error, ne le Vic. ne serra amerce pur ceo, ut dicitur, uncore ceux que sont nosme in le Pannel apres le 24 avera lour action sur le Stat. vers le Vic. come semble.*

*Auxi si per tiel (ou auter) retourn del Vic. le brief abater, per que le plt. est delay de son suit; quare si le plt. n'avera son action sur le Case vers le Vic. pur tiel delay & prejudice a luy fait.*

Thorp saith that the Law was founded in this, that every Enquest should be taken per duodecim liberos & legales homines, & non per pauciores. 41 E. 3. f. 36.

Also the Sheriff at every Assises or Gaol-delivery, and Sessions of the Peace, is to return 24 Juroz, out of every Hundred, for Enquiry, &c. (as it seemeth by the form of the Precepts) beside 24 others, for the body of the County.

Upon a Precept directed to the Sheriff, from Justices of the Peace (out of their Sessions) to return before them a Jury, to enquire of any Riot or Forcible Entry, &c. the Sheriff ought to return 24 persons, &c. 19 H. 7. c. 13. & 8 H. 6. c. 9. upon pain of 20 l. to be forfeited by the Sheriff, &c.

In a Writ of Attaint, the Jury (called the Grand Jury) are 24. who are to be warned the first day. Old Nat. Br. 111. & 9 Co. 33. & Finch 112. And the form of the Writ to the Sheriff to impannel and return them, is accordingly. Fitz. 105. h.

And so in all other Actions, Suits, Trials or Enquiries, the Sheriff upon any Precept directed to him, for returning of a Jury, is to impannel and return 24 as it seemeth; although the Trial, or Enquiry, may be by fewer.

The Jury in a Writ of Right (called the Grand Assise) must be of four Knights (or of others in default of Knights) summoned and re-

turned

turned by the Sheriff, which four Knights, &c. are to chuse a Jury of 12 unto them; and so in all there must be 16. (Finch 412.) which also must be summoned and returned by the Sheriff.

Also by the Statute of Westminster 2. c. 13. Sheriffs in their Turns shall cause their Enquests to be made of 12 at least: And this Statute herein seemeth to be in affirmance of the Common Law; For by the Common Law, if a Man had been indicted by fewer than by 12. the Indictment had been void. What respect is to be given to this number of 12, See Co. L. 155.

And so in the County Court, if the Suit be by a Justices, the Trial shall be by a Verdict of 12 Men.

If upon a Venire Facias the Sheriff shall return but 23, and 12 appear and give their Verdict, this is erroneous. 5 Co. 36, & 37. *Mes ceo est remede per le Statute de Feofailes.* Co. Ibid.

*Sur Issue joine sur prescription de Common in un grand wast, jacens in two Counties, Et le Trial agard de utroque Comitatu, & in chescun Pan- nel 12 tantum fuer' return,* Dyer 316.

Fitz. 107. a.  
Finch 323. &  
Fitz. 112.

And yet in a Writ of *Wast*, the Plaintiff hath a Writ to the Sheriff to enquire of the *Wast*, &c. for that this is but an Enquest of *Dis- sicc*, the Sheriff may inquire by the Oath of six or eight persons of this *Wast*, and need not to take 12 persons, by the Opinion of *Hj.* Fitz. 107. c. But Term. Pasch. anno 7 E. 6. it was holden in such Case, that the Enquiry ought to be by 12 in number at the least; And so in all other Inquisitions or Enquiries. Yet in a Writ de *Etate pro- banda*, some also have thought that it is not necessary to have the number of 12 upon the Enquest, &c. but that any number above two will serve, for that the Trial is to be by Proofs. See Fitz. Livery 5. & Stamf. de Prærog. 79. But the Writ directed to the Sheriff to re- turn a Jury before Commissioners, to enquire thereof, is in this form, Rex, &c. *Præcipimus quod Summoneas, &c. 12 probos & legales ho- mines, &c.* And again *habeas ibi nomina illorum duodecim, &c.* Fitz. 257. d. e.

So Jury shall be compelled to appear in any of the King's Courts at Westminster, for the Trial of any Issue in any Suit, upon any penal Law, for any Offence committed above thirty miles from the City of Westminster, except in case where the Attorney-General for the time being, for some reasonable cause in that behalf shewed, shall require the same to be tried at the Bar in any of the Courts of the Kings' Majesty, his Heirs or Successors at Westminster aforesaid, which request shall be noted on the backside of the Writ of *Distringas* thereupon awarded, to the end the Sheriff or his Bailiff may and shall signify the same to the Jury that are in such cases impanelled, 18 Eliz. 5. 27 Eliz. 10.

To appear at  
Westminster.

If any Sheriff, Under-Sheriff, Sheriffs Deputies, Sheriff or Under-Sheriffs Clerk, or any Bailiff of Franchise shall receive, take or have by himself, or by any other, any Sum of Money, Reward, or other profit directly or indirectly, or do take any promise, make any agreement or assent to have any Sum of Money, Reward or other profit, directly or indirectly, of any person or persons for the sparing, not warning or not returning of any person to be sworn as a Jury, for the Trial of any Issue joyned or to be joyned in any of the King's Courts aforesaid (viz. the Kings's Bench, Common-Pleas and Exchequer) or before any Justices: then every Sheriff, Under-Sheriff, Bailiff, &c. so offending shall forfeit for every such Offence 5 l. to the King and In- former, to be recovered in any Court of Record, &c.

Spare pur re-  
wards.

Vide Crompt. 128. Where two Prisoners were indicted by one Bill, and two others by another Bill, and one by a third Bill, and the Sheriff returned

returned one and the same Jury, three times, to try them, and the Justices allowed thereof. *Mes le evidence doit estre deliver al un mesme temps vers tous.* Ibidem.

## C A P. LXXXVII.

## The Sufficiency of Jurors.

*The sufficiency  
of Freehold.*

**B**y the old Statutes none were to be put or returned in any Assizes or Juries, that might not dispend 20 s. yearly in Land; and if such Assises or Juries were to be taken out of the Shire, none should pass or be returned in them, but such as might dispend 40 s. yearly at least in Lands.

And if the Sheriff or any Bayliff of Liberty shall offend in any point therein they should yield the party grieved damages, and be amerced besides to the King.

Note that 40 s. in those days maketh at this present, at the least 6 l. of our current Money, if the just value were taken now to the proportion of Monies. Mr. Smith de Repub. Angl. 30.

*Per trial hors  
del County 5 l.*

And by a later Statute made anno 21 Ed. 2. no Sheriff, Under-Sheriff, Bayliff of Liberty, or other Officer shall impanel any Jurors for the trial of any matter which is to be tried out of their proper County, except such Jurors may spend in Lands and Tenements 5 l. per annum, at the least: and if they shall do otherwise, the party may have his Action upon the Statute against the Sheriff or other Officer. Stat. 21 E. 1. De hiis qui ponendi sunt in Assisib.

*Deint le County  
40 s.*

And none shall be impanelled to try any matter within the County, except they have in Lands and Tenements 40 s. per annum, and the party grieved may also have his Action upon the Statute against the Officer offending herein. Fitz. N. B. 166. c. Stat. 21 E. 1.

*Touching Life.*

Also by the Statute of 2 H. 5. c. 3. no person shall be admitted to pass in or upon any Enquest to be taken or made between Denizen and Denizen, upon trial of the death of a Man; nor in any Enquest betwixt party and party, in any Plea Real; nor in any Plea Personal, whereof the Debt or Damages declared amount to forty marks, if the same person have not Lands of the yearly value of 40 s. above all Charges, so that he be challenged for that cause by the party, &c. See Stat. 8 H. 6. c. 20. & Co. L. 272.

*Pleas Real.*

*Or forty marks  
damages.*

And by a late Statute made tempore Car. 2. which is since expired, none should be returned but those which had 20 l. per annum.

But in all manner of Enquests, where any alien is a party to any trial (although the King be a party) the one half of the Enquest or Jurors shall be of Aliens (if so many Aliens be in the Town or place where such Enquest is to be taken, &c.) And that although such Aliens have not Lands to the value of 40 s. per annum.

And yet where any Egyptian shall be indicted of any Felony, the Enquest that shall pass between the King and such party shall be altogether of English-men. 22 H. 8. c. 10. 1 & 2 P. & M. 4 & 5 Eliz. c. 20.

*De medietate  
lingue.*

Neither shall a Scottish-man have his Trial here, per medietatem lingue, for that they are accounted Subjects and not Aliens: See Dyer 304. & 9 Co. f. 117.

By the Statute made 35 H. 8. c. 6. it is enacted, that in every case where such persons as should pass upon the trial of any Issue (joyned in any of the King's Courts of Record commonly holden at Westminster,) ought by the Law to spend 40 s. by the year of Freehold for term

term of life, That Writs of Venire facias, which from thenceforth shall be awarded and directed for the impannelling of such persons as shall trie the same issue, shall be in this form, Rex, &c. præcipimus, &c. quod Venire facias coram, &c. 12 liberos & legales homines de vicineto de B. Quorum quilibet habeat quadraginta solid' terr' tenement' vel reddit' per annum ad minus, per quos rei veritas melius scire poterit, & qui nec, &c. (after the ancient form.) And in every case where it is not requisite, that the persons that shall pass upon the trial of any issue (joyned in any of the Kings Courts aforesaid) shall dispend forty shillings by the year of Freehold, that then the Writ of Venire Facias that shall be awarded shall be made after the form aforesaid, omitting the clause Quorum quilibet habeat 40 s. terræ, tenement', vel reddit' per annum ad minus. And that upon every such Writ of Venire facias that shall have the said clause Quorum quilibet, &c. the Sheriff or other Minister to whom the making of the Pannel shall appertain, shall not return in any such Pannel any person, unless he may dispend forty shillings by the year at the least, of Estate of Freehold, out of ancient Demesne, and within the County where the Issue is to be tried (and also shall return six sufficient Hundredors at least, &c.) upon pain to forfeit for every person being returned in any such Pannel that cannot dispend 40 s. by the year (as aforesaid) 20 s. 6 Hundredors.

27 Eliz.

But after by the Statute made Anno 27 Eliz. cap. 6. it was enacted, That in all cases where any Juroys to be returned for the trial of any issue, (joyned in any of the Courts of the Kings-Bench, Common-Pleas, and the Exchequer. or before Justices of Assize) by the Laws of this Realm ought to have Estate of Freehold in Lands, Tenements or Hereditaments of the clear yearly value of 40 s. that in every such case, the Juroys that shall be returned shall every of them have Estate of Freehold (in Lands, Tenements or Hereditaments) to the clear yearly value of 4 l. at the least, and that the Writs of Venire Facias, which shall be awarded for the impannelling of Juries in the cases aforesaid, shall be in this form, Rex, &c. Præcipimus, &c. quod Venire fac. coram, &c. 12 liberos & legales homines de vicineto de B. Quorum quilibet habeat quatuor libras terræ, tenement' vel reddit' per annum ad minus, &c. And that upon every such Writ of Venire fac. the Sheriff or other Minister unto whom the making of the Pannel shall appertain, shall not return in any such Pannel any person unless he may dispend 4 l. by the year, at the least of Freehold, out of ancient Demesne, within the County where the Issue is to be tried, upon pain to forfeit for every person being returned in any such Pannel that cannot dispend 4 l. Freehold (as aforesaid) 20 s. 4 l. per ann.

35 H. 8. c. 6.

2 E. 6. c. 32.

And in every Writ of Venire Facias wherein the aforesaid Clause (Quorum quilibet habeat quatuor libras, &c. shall be omitted, there the Sheriff or other Minister to whom the making of the Pannel shall appertain, shall not return in any such Pannel, any person unless he may dispend some Lands or Tenements of Estate of Freehold out of ancient Demesne within the County where the Issue is to be tried, upon pain to forfeit 20 s. for every person returned in any such Pannel, that cannot dispend some Land by the year.

27 El. c. 6.

35 H. 8. 6.

But note, that these Statutes made Anno 35 H. 8. & 27 Eliz. do not extend to any Juries to be returned in any City or Town Corporate, or other Town or place privileged to hold plea, or in the twelve Shires of Wales, but that there they shall and may be returned, as heretofore they lawfully might have been. Corporate Towns.

A Juroz was challenged for not having sufficient Freehold, and it was found that he had nothing but certain lands which one H. had letten to him

him for term of life, yielding a certain Rent, with a clause of Reentry for default of payment thereof, and the Opinion of the Book 7 H. 4. f. 1. was, that for such a Freehold, so defeasible, he was not to be sworn; and yet the Reversion also of the Land was in the Wife of the Juror; quod mirum, per Br. titulo Challenge 34.

If A. shall infeoff B. to the use of the payment of certain Money (to be levied out of this Land) to the use of a third person. Now during the time of the payment of this Money A. is not sufficient Freeholder to pass in a Jury. Keil. 167. But here the Feeoffee is sufficient, for the Freehold which is in him. Ibid.

If A. maketh a Lease for 10 years, absque aliquo reddendo, yet A. shall be a Freeholder to pass upon a Jury, for the Freehold which is in A. Ibid.

If A. letteth his Lands for years, the Remainder to B. in Fee, here B. may pass upon a Jury, for the Freehold which is in him (in Rem.) if the Lands be of the yearly value of 40 s. Ibid.

A Juror was challenged for that he had not sufficient within the Hundred the day of the Venire fac. returned, and it appeared that he had sufficient at the day of distress, and was therefore sworn. Dyer 316.

So if he hath sufficient at the time of the Pannel made, though he had not at the distress, yet he shall be sworn. Ibid.

See plus hic cap. 92.

*In Attaints.*

*20 l. per annum*

Sheriffs, Bayliffs of Franchise, and Coroners ought to return in Writs of Attaints in Plea of Land of the yearly value of 40 s. or more; and in Actions of Attaint for Deeds concerning Land of the yearly value of 40 s. and in personal Actions of 40 l. or more, such persons inhabiting within his Bailwick which can dispend 20 l. per annum, besides all charges, for term of life at least, and out of ancient Demesne, and Cinque Ports; and if there be not sufficient persons under the degree of a Baron inhabiting within the County which can expend 20 l. per annum, then they shall impanel other persons of the most sufficient in possession of yearly value of Lands under the value of 20 l. per annum, upon pain of 20 l.

*20 Marks.*

*5 Marks.*

*Tales into another County.*

By another Statute made anno 23 H. 8. where the thing in demand extendeth to 40 l. (and concerneth not Man's Life) every of the Grand Jury that shall pass in an Attaint in such case must have Lands to the value of twenty marks by the year of Freehold out of ancient Demesne: But where the thing in demand (being a thing personal, as Debt, Trespass or the like) shall be under 40 l. it sufficeth if every person of the Grand Jury, which shall pass in the same Attaint, may dispend five marks by the year of Freehold Land out of ancient Demesne, or be worth a hundred marks in Goods.

*Before Escheators.*

And if there be not persons of such sufficiency of Freehold within the Shire (or place where any of the said Attaints shall be taken) as may pass in the same, then a Tales shall be awarded into the Shire next adjoining (by the discretion of the Justices before whom the same Attaints shall be taken) which shall be warned to appear upon like pains as is aforesaid, and enabled to pass in the said Attaints, as if they were dwelling in the Shire where the same Attaint shall be taken.

Also no Sheriff or other person upon any Writ or Precept to them directed to return before any Escheator or Commissioners, shall return any person to enquire of any Lands or Tenements, except such person, or others to his use, have Lands or Tenements of the yearly value of 40 s. above all charges, within the same Shire where the Enquiry shall be made, upon pain to forfeit 5 l. for every Juror otherwise returned, (except the same Jurors be returned before an Escheator in a City or

15 H. 6. c. 5.  
18 H. 6. c. 2.  
10 H. 7. 11.  
21 H. 7. 38.  
Keilw. 97.

23 H. 8. c. 3.

23 H. 8. c. 3.

1 H. 8. c. 8.  
3 H. 8. c. 1.

Corporate Town, or which is made by any person having privilege to make Escheatozs.

And by an old Statute made anno 34 E. 3. c. 13. such Jurozs returned before Escheatozs must be men of good fame, and dwelling in the same County where the inquiry shall be.

2 H. 6. c. 9.

Upon every Precept directed unto the Sheriff from Justices of Peace to enquire of forcible Entries or Detainours, the Sheriff ought to return sufficient persons dwelling next about the Lands forcibly entered upon or detained, whereof every man to be impannelled to enquire in that behalf, shall have freehold Lands or Tenements of the clear yearly value of forty shillings at least above reprises; and for every default herein the Sheriff shall forfeit twenty pound, and also pay a fine to the King: And yet note, that if such Jurozs shall not have Lands of such yearly value, yet their presentment is good for the King, but then quere whether the party put out forcibly, &c. shall have restitution, &c. Lamb 155.

Upon forcible Entry.

25 H. 7. 13.

Upon a precept directed unto the Sheriff from the Justices of the Peace, to return before them a Jury to enquire of any Riot, Rout, or unlawful Assembly, the Sheriff shall return four and twenty persons dwelling in the Shire where such Riot, &c. shall be committed, whereof every one of them shall have lands, &c. within the same Shire to the yearly value of twenty shillings per annum, of Freehold, or of twenty six shillings and eight pence of Copyhold, or of both, over and above all charges, and the Sheriff in default of such return shall forfeit to the King the sum of twenty pounds.

Upon Riots.

xx s.

2 H. 5. c. 8.

Also in Liberties and Franchises, and in Cities, Boroughs and other Towns and places enfranchised (which have Justices of Peace therein) the Bayliffs of the Franchise, or other Officers, ought to impanel sufficient Jurozs to enquire of Riots (if sufficient persons may there be found) upon pain of 40 l. 2 H. 5. c. 8.

Upon the default of the Justices of Peace and Sheriff in not executing the Statutes made for suppressing of Riots, &c. the party grieved may have a Commission out of the Chancery to enquire of the matter, as also of the defaults of the Justices and Sheriff, upon which Commission the Coroners of that County where the Riot, &c. was committed, shall make the pannel, and shall return only such persons for that inquiry as have lands, tenements or rents to the value of 10 l. by the year at least: But if the Sheriff reputed to be in default as aforesaid be discharged of his Office at the time that such Commissions shall be awarded out of the Chancery, then the new Sheriff of the same County shall make the pannel upon this Commission, and shall return only such persons as have but ten pound by the year at least (ut supra) and in default thereof the new Sheriff shall forfeit forty pound.

10 l. per annum.

3 H. 7. c. 1.

Enquests taken by the Justices of Peace to enquire of concealments of other enquests taken before them, or others, &c. every man that shall be returned upon such enquests of (inquiry) must have lands and tenements to the yearly value of forty shillings at the least, 3 H. 7. c. 1.

Enquests of Enquiry.

The sufficiency of Jurozs in the Sheriffs Tozne. See hic postea tit. Sheriffs Torne, & 1 R. 3. cap. 4.

Sheriff's Torne.

Of what sufficiency Jurozs impannelled in the City of London (in several cases) must be. See the Statutes made 11 H. 7. cap. 21. 4 H. 8. cap. 3. 5 H. 8. cap. 5. & 37 H. 8. cap. 5. P. Jurors 15.

In London.

What sufficiency is required in Jurozs to enquire of Felonies committed in Corporare Towns. See the Statute made anno 23 H. 8. c. 13. P. tit. Jurors 15.

Corporare Towns.

The sufficiency of other Jurozs in Corporare Towns. See the Statute made 35 H. 8. cap. 6.

*Lancaster.*

Of what sufficiency those Jurors must be in the County of Lancaster, which shall indict a Forreigner dwelling in another Shire, Et e converso. See the Statute made Anno 33 H. 6. cap. 2. P. Jurors 17.

In the County of Lancaster every Juroz must have 5 l. per Annum within the same County, who shall enquire or pass in tryal of any Treason or Felony there. 7 H. 5. cap. 1. & 18 H. 6. cap. 12.

Of what sufficiency those Jurors must be, which in any other County shall indict any person inhabiting within the County of Lancaster, *ibid.*

*Wales.*

The sufficiency of Jurors in Wales. See the Statute made Anno 43 H. 8. cap. 26. Poulton tit. Wales 70.

Note, that it is very needful for the High-Sheriff to have a Book containing the Names of all the Freeholders within his County, and their sufficiencies: so that he himself may not only make the pannels according to his Oath, Artic. 14. But also that he may the better know his sufficiency and ability, to be Pledges or Sureties, &c. for other persons, as occasion shall serve: and besides, if the Sheriff shall return any Juroz in issues, which is not sufficient, the Sheriff may be enforced to pay their issues for them.

## CAP. LXXXVIII.

## The Antiquity of Jurors.

**T**HE Trial of Juries (i.e. of all matters of Fact, by the Oaths of twelve men, was long time before the Conquest, and is one of the invincible Arguments of the Antiquity of the Common Law of this Realm, being only appropriated to them. Co. Lit. 3. & 8. Preface.

Master Cambden (in his Britannia, pag. 153.) saith thus thereof; Whereas Polidore Virgil writeth that William the Conqueror first brought in the Trial by twelve Men, there is nothing more untrue, for it is most certain and apparent by the Laws of Etheldred the Saxon King, that it was in use many years before, &c. See Co. Lit. 155. b. and Eph. Anno Christi 979.

By some Opinions Lucius King of England ordained this our Trials by twelve, of matters in Fact (which should be about Anno Domini 190.) Master Selden, cap. 10. And this he saith that godly King Lucius did, according to the Example of Christ, who ordained and chose twelve to bear witness of his Resurrection. Wherewith agreeth the Apostolical Canons. See John 15. 27. Acts 1. 22. and 10. 41. And Sir John Fohn Fortescue saith, That Juries were used among the Christian Britains.

Again Thorpe (a Reverend and Learned Judge) in the time of King Edw. III. concurring in Opinion with these before-named, saith That it was a foundation of the (Common) Law, that every Enquest should be taken per duodecim liberos & legales homines; And if it were a foundation of the Law, then it was one of the first Laws. See 41 E. 3. f. 36.

Besides, we must needs confess, that no Law can be without trials: Now in the City of London (a most ancient City) they had this trial by 12 in their Hustings, and in the time of the Britains, so in all other ancient Cities where they have like Customs and Liberties: yea the ancient Hundred Courts, Shiremoors, Wardmoors, Swainmoors, and Leets, which are often mentioned in the Saxon Laws as things in

in use, they had no other kind of trial or inquisition, but this by twelve men; and that by custom or prescription, whereof no beginning could be proved by any Record, Writing, or other lawful testimony; for that is in Law said to be by Prescription, and not the continuance of 50, 60, or 100 years. See plus M<sup>r</sup>. Selden. cap. 10.

For the excellency and indifferency of this kind of Trial, and why it is only appropriated to the Common Laws of England. See Justice Fortescue, cap. 25, 26, 27, 28, 29, 30, 31, 32. &c.

## C A P. LXXXIX.

## Return of Issues.

**N**OW concerning Issues to be returned by the Sheriff for default of appearing, the Sheriff shall do well to consider of his Oath, whereby he stands bound truly to set, and return reasonable and due Issues upon all such as be within his County, sc. upon the Defendants or Tenants, having sufficient Lands or Goods, after their Estate, to the end they may the rather appear.

Concerning the Defendants, the Statutes to this purpose are as followeth:

First, by the Statute of Westm. 1. cap. 44. The Tenant or Defendant making default of appearance after the first Attachment returned, &c. shall lose and forfeit Issues.

And when the Tenant or Defendant is distrained for such Issues, it seemeth that the Sheriff ought to deliver them to the Painperners, or Sureties; and if the Party maketh default at his day, the Sheriff shall answer for those Issues in the Exchequer, by the Estreats thereof made, And the Sureties shall be answerable therefore to the Sheriff; And this is the Order limited by the Stat. of Westm. 1. ut dicitur.

West. 2. c. 39.  
1 E. 3. c. 5.

But for as much as Sheriffs and Bayliffs of Liberties many times make false returns as touching the Articles, Quod de exitibus, &c. sometimes returning that there are small issues when they may return great, and sometimes do make mention of no issues, It is therefore ordained by the Stat. of Westm. 2. that if the Plaintiff shall demand Oyer of the Sheriffs return, it shall be granted him, and if he aver (or offer to prove) that the Sheriff, &c. might have returned greater issues, he shall have from the Justices of the one Bench or the other, a Writ to the Justices of Assize that they shall enquire thereof (sc. that they shall enquire of what and how great issues the Sheriff might have made his return from the day of the Writ purchased, unto the day of the return thereof:) And if it be found that he hath not answered for the whole, then upon the return thereof, he shall be charged with the overplus by the estreats of the Justices delivered into the Exchequer, and besides shall be grievously amerced for his concealment, Vide Br. Issues 2. 4. 6.

*Issues upon the Defendant or Tenant.*

And yet quære whether the Sheriff may after levy the same of the Tenant or Defendant, for that it is contrary to his Return, &c. Vide Abr. d'Ass. f. 137.

For the Form of this Writ directed to the Justices of Assize, to enquire of the issues. See Register, f. 26. & 58.

And by the same Statute of Westm. 2. within or under the name of Issues

*Issues quid.*

Issues are contained Rents, Cozn in the Chauge, and all moveables (except Hozse, Harnels, Apparel and Household-stuff.)

But where Cozn is growing, it seemeth the Sherifff is not bound, (oz needs not) to return that for issues, for that it may so fall out that the Cozn may afterwards be spoiled oz lost, by reason of tempest, oz otherwise, befoze it can be carried, &c.

Also it hath been holden that the Sherifff needs not to Return in issues, any Rent except it be due at the day that he shall make the Distress: And if it be then due, the Sherifff may then come to the tenant, and command him to pay the same Rent to his Lord, &c.

But note, that the Sherifffs and Bayliffs of Liberties by the said Statute of Westm. 2. & 1 E. 3. 5. must return sufficient, and good and reasonable issues upon such persons as have Lands oz Goods sufficient, sc. they must return in issues so much as the party may receive and take, oz as ariseth of the profit of the Lands within that County, and the Rents from the day of the teste of the Writ, until the day of the return thereof, and the value of his Goods which he hath in all that time (except his Hozles and their Furniture, and his Apparel and Household-stuff,) and if the Sherifff oz Bayliff of Liberty doth not accordingly, they shall answer the surplusage. See 27 H. 8. f. 3. & Br. Issues 1, 2, 4, 6, 7, & 21.) And Mr. Fitzh. saith there that this Statute of West. 2. is good Law; and for that it is not in use much inconvenience is.

*Quantum.*

West. 2. 39.  
27 H. 8. f. 3.

As if his Land be worth xij C l. by the year, and one Months space between the Teste and the Return, there C l. issues must be returned upon him, Finch 353.

Finch 353.

The Sherifff returned upon the Tenant oz Defendant but 7 d. in issues upon the Distringas, and therefore the Sherifff was to be amerced (by the Opinion of Fortescue) for that he had returned less than the Costs of the Writ of Distringas, which is 13 d. But quere whether the Sherifff shall be amerced only, for returning too small issues, for by the Opinion of Paston in the same Case, it seemeth rather that the Plaintiff shall have his Averment against the Sherifff upon the aforesaid Statute of Westm. 2. and so to have his Writ to the Justices of Assize to enquire thereof, and so to charge the Sherifff with the overplus; and besides to have the Sherifff amerced according to the Statute, Vide Abr. d'Ass. 115, & 137. & 19 H. 6. 8. Br. issues 6.

And yet where the Sherifff hath returned too small issues, upon the Tenant oz Defendant, if in time he prayeth to amend his return therein, the Court in favour will permit it. Br. issues 1. 27 H. 8. f. 3.

In a Writ of Right of ward, oz of Escheatment of ward, after the Grand Distress, if the Defendant cometh not in at the day prefixed, and that Proclamation be made, &c. according to the Statute of Marlebridge, cap. 7. the Sherifff ought to return issues upon the Defendant, &c. Vide hic cap. 102.

Upon a Distringas against the Defendant, the Sherifff must return issues, Hic cap. 56.

Upon a Distring' to Distrain the Suiters for not suffering the Sherifff to Record the Plea in a Court Baron, &c. the Sherifff is to return issues upon the Suiters, Fitz. Record. 7. & Record 15.

But in the former case the Sherifff returned but 12 d. in issues upon the Suiters, Fitz. Record. 15.

And upon a Distringas, though the words of the Writ be Quod distring' per omnes terras & catalla sua &c. yet the Sherifff ought to distrain him but reasonably, &c. Hic. cap. 56. tit. Distringas.

And yet if the issues returned upon any be never so great, it seemeth the Party hath no remedy but they shall be forfeited, oz the Sherifff shall be charged therewith if they be estreated, Hic cap. 11.

Upon

8 E. 4. c. 2.

Upon process against any person, for retaining or giving of Liberties, or against any which is retained (contrary to the Statute) the Sheriff ought to return upon the Defendant (being a person sufficient) no less than 20 s. at the first day of the distress, and at the second day 30 s. and at the third day 40 s. and so at every day after more by 10 s. in issues; and if any Sheriff do the contrary, he shall forfeit for every such return against the form aforesaid 20 s. Retainers.

The Statute of Westm. 2. cap. 39. doth give an averment against the return of the Sheriff if he return too small issues; and yet a man shall not aver against the Sheriffs Bayliff, that he might have returned greater issues, &c. But against the Sheriff himself only, by this Statute of Westm. 2. Fitz. Averment 43. Averment.

But by the Statute of 1 E. 3. cap. 5. made against the false returns of Bayliffs of Franchises (which have full return of Writs) a man shall have Averment, and recover against them (as well as against the Sheriff,) and that of too little issues returned, as in other cases: and all the punishment shall fall only upon the Bayliffs.

Fitz. Averment 16.

Note, that the Plaintiff may aver against the return of the Sheriff, when he returned too small issues, as aforesaid. But the Defendant cannot have such averment, and this by force of the Stat. of Westm. 2. c. 39. For before that Statute the Plaintiff had no Remedy at the Common Law, but only his Action of the Case against the Sheriff in such case, which remedy the Plaintiff may have still.

Fitz. Averment 26 &amp; 45.

Note also, that an averment of too small issues lieth as well against the return of the Sheriff of too small issues returned upon Jurors, as upon the party, &c. for this Stat. of West. 2. was made to oust all delays by false Returns; and the party is as well delayed where the Sheriff returneth too small issues upon the Jurors, as where he returneth too small issues upon the Defendant, 11 E. 2. Fitz. Averment 45.

And herewith agreeth the Book of 2 R. 3. f. 12. b. where the Sheriff should have been amerced for returning too small issues upon Jurors, but that the Sheriff was there present and amended the same.

And yet in the Book 10 H. 7. f. 11. some hold that too small issues returned upon Jurors, was not within the Statute.

## C A P. XC.

What Issues the Sheriff, &c. must return upon Jurors.

**B**y the Common Law the Sheriff was to return no issues upon a Venire facias Jurator. Neither was it needful (or at least not used nor required) by the Common Law, to return any great issues, upon any Writs of Habeas Corpora, or Distring' Jurator. until the Statutes of 35 H. 8. cap. 6. & 27 Eliz. cap. 6.

But for the more expedition of Justice, and more speedy Trial of Issues, which are to be tryed by the Verdict of 12 Men (which in former times were greatly delayed, and that chiefly for lack of appearance of the persons returned to try such issues) there have been divers Statutes made for the better expedition of Justice to be had in such manner of Trial of Issues; as also in some cases of Enquiry, as hereafter followeth.

And as it is the Law, that for execution of Justice every man shall be impannelled when need requireth, so it is a reasonable Law that such  
as

as will not appear, should have some punishment for their not appearing (for else the Law would be clearly frustrate in that point.) And the punishment or pain in such case is, that they shall lose issues to the King for their not appearing, Doct. & Stud. 38.

*Habeas Corpus,  
or Distring.  
Jur.*

And therefore upon every first Writ of Habeas Corpora or Distringas Jurator. with a Nisi prius, delivered of Record, to the Sheriff or other Minister: the Sheriff or other Minister to whom the making of the Return shall appertain, shall return in issues upon every person impannelled and returned upon any such Writ at the least 10 s. and at the second Writ of Habeas Corpora or Distring. with a Nisi prius, upon every person impannelled and returned upon any such Writ 20 s. at the least, and at the third Writ, &c. 30. s. and upon every Writ that shall be further awarded to try any such issue, to double the issues last aforespecified, until a full Jury be sworn, or the process otherwise ceased, upon pain to forfeit for every such return of issues to the contrary, five pound.

35 H. 8. c. 6.  
27 El. c. 6.

al {  
1. 10 s.  
2. 20 s.  
3. 30 s.  
4. &c.  
double.

*Corporate vil-  
lages.*

But this extendeth not to any issues to be returned in any City, or Town Corporate, or other Town or place privileged to hold Plea, nor in the 12 Shires of Wales, but that they may be returned as before they lawfully might have been, this Act notwithstanding, Stat. 27 Eliz. cap. 6.

Note, that upon reasonable cause proved before the Justices of Assize, the said Justices may discharge any Juror of the issues upon him returned, and the Sheriff, &c. having commandment by the said Justices to omit the returning of such issues as aforesaid, upon such Juror, shall be therein discharged of the penalty aforesaid, for the non returning of the said issues; also if the Justices of Assize do not come at the day appointed, or that the Assize be discontinued for any other occasion (other than by default of Jurors) then every of the Jurors shall be discharged of their Issues, &c. and the Sheriff, &c. shall be likewise discharged of the penalty of these Statutes, for the not returning of such issues, as therein are limited.

35 H. 8. c. 6.  
2 E. 6. c. 32.

*Vic. amerce.*

Upon a Distring. Jurator. super Appell. mortis (where they were Knights and Esquires who were in the Writ) there was but 8 d. returned (by the Sheriff) upon every Juror, and the Sheriff had been therefore amerced, but that he was there present and amended it, and set or returned upon every Juror, 2 s.

2 R. 3. 13.

And yet if the Sheriff upon a Distringas Jurat. shall return no manner of issues, and a full Jury shall appear, &c. this is no Error, for the King hath no loss, and the issues are for the King, which he is not to have if a full Jury do appear, Br. Rector. 86.

3 H. 7. f. 8.

The same Law is, that if the Sheriff shall return issues upon 12, and none upon the rest, and a full Jury shall appear. Ibidem.

If the Sheriff shall return a Juror in Issues which is not sufficient (or hath no Land) he is punishable, &c. the Sheriff, shall be charged to pay those issues himself.

*Sur Juror nient  
summon.*

If upon an Habeas Corpora, or Distringas Jurat. the Sheriff, &c. shall return any issues upon any Hundred or Juror, whereas the same Hundred or Juror was not lawfully summoned, warned or distrained in that behalf, then the Sheriff, &c. shall lose for every such offence double so much as the said issues returned upon such Hundred or Juror not lawfully summoned, warned, or distrained, shall amount unto, the one half thereof to the King, the other half to him that will sue for the same, 5 Eliz. cap. 25. & 35. H. 8. cap. 6.

*In Attaint.*

No Sheriff, or other Officer, shall return in the Kings Courts less issues in Actions of Attaint, than forty shillings upon the first Writ of Distress, and five pound at the second Writ of Distress, and the double upon

15 H. 6. c. 5.

upon every other Writ of Distress against the persons impannelled and returned to be Jurors in the same Action, upon pain to forfeit twenty pound to the King and party grieved. See the Statutes of 11 H. 7. c. 21. 23 H. 8. c. 3. & 13 Eliz. c. 25.

What issues shall be returned upon the Jurors in London. See *In Londres.*  
11 H. 7. c. 21. 4 H. 8. c. 3. & 5 H. 8. c. 5. P. Jurors 16 & 17. *Sur. fore. Entry.*

8 H. 6. c. 9.

Upon every Precept directed to the Sheriff from Justices of Peace to enquire of forcible Entries, or detainer, the Sheriff ought to return upon every Juror, at the first day, or upon the first precept twenty shillings in issues; and at the second day forty shillings, and at the third day five pound, and at every day after the double, upon pain to forfeit to the King twenty pound for every default, and besides to make fine and ransome.

19 H. 7. c. 13.

Upon every Precept directed to the Sheriff from Justices of the Peace, to return them a Jury to enquire of a Riot, the Sheriff ought to return upon every person so by him impannelled, at the first day twenty shillings in issues, and at the second forty shillings, and the Sheriff for his default herein shall forfeit 20 l. *Sur Riots.*

2 H. 5. c. 8.

By the Statute of 2 H. 5. c. 8. upon a Commission granted out to enquire of the defaults of the Justices of the Peace and old Sheriff, in not executing the Statute made for suppressing of Riots, the Coroners shall return the Enquest, and they shall return upon every person impannelled, at the first day (when issues are to be lost) 20 s. at the least, and at the second day 40 s. at the least, and at the third C. s. at the least, and at every day after the double at least, upon pain of 40 l. and if it happen that the said Sheriff, so reputed in default be discharged of his Office at the time that such Commission be awarded out of the Chancery, then the new Sheriff of the same County, his Successors mediate or immediate for the time being (and not the Coroners) shall make the pannel upon Commission, returnable in the manner and form as the said Coroners should do in the time when the Sheriff so reputed in default continued in his Office, and the same new Sheriff in default of returning of such Issues which the Coroners be to return as aforesaid, shall forfeit 40 l. to the King.

Upon an Information taken upon the Statute of Liberries (made Anno 8 E. 4. cap. 3.) the Sheriff ought to return in issues, at the first day 20 s. at the second day 30 s. at the third 40 s. at at every day after for every time to increase them 10 s. upon pain of 20 s. to the Sheriff for every default.

4 H. 6. 7. -  
Crompt. 126. a

Note also, that if there appear so many Jurors, so that twelve are sworn upon the Issue, then the rest which made default shall not lose any issues; otherwise (sc. if twelve do not appear) those which appear shall have their appearance noted, sc. entered and recorded, and shall save their issues, and the rest which made default shall lose their issues. Br. Issues 16. Stat. 8 E. 4. cap. 3.

And yet when eight, &c. of the Jury appear and the rest make default, by reason whereof they are to lose their issues, and at the same time the Plaintiff is demanded, and is non-suit, this shall save the issues, of the Jurors, quod nota. Br. Issues 14.

A Jury do appear and after make default, they shall lose their issues. Br. Enquest. 42.

Tales is a Latin word, signifying like or such, and is here used for a supply of Men impannelled upon a Jury, and not appearing, or at their appearance challenged as not indifferent; Here the Judge upon Petition granteth a supply to be made by the Sheriff, of some other Men there present, Tales, or like in reputation to those that were impannelled.

Also

Also by the Statute of 35 H. 8. where the principal Jury do not fully appear, or that after appearance of a full Jury, by challenge of any of the parties the Jury is like to remain untaken for default of Jurors, there the Justice upon request may cause a Tales de circumstantibus to be returned or named by the Sheriff, &c. But yet those of the principal Jury which made default shall lose their Issues, notwithstanding that the Jury shall be full upon the Tales, &c. Br. B. Issues 16.

35 H. 8. c. 6.  
P. Juror 23.  
See Dyer 200,  
246, & 376.

Note, that a Tales de circumstantibus may be granted at the Suit or request of the Plaintiff or the Defendant; as also upon and in popular actions; and the Sheriff or other Minister to whom the making of the return shall appertain shall add and annex to their former panels, the Names of the persons so named and impannelled upon the Tales, &c.

35 H. 8. c. 6.  
4 P. & M. 7.  
14 El. c. 9.

Note, that there may be many Tales one after another, till the Jury be full, as a Decem Tales, an Octo Tales, a Sex Tales, &c. Finch. 4. 14.

But every Tales must be of a less number than the former; as after an Octo Tales, a Sex Tales, but not a Decem Tales, nor an Octo Tales again. Ibidem.

Also every Tales must be fewer in number than the principal Panel; as where the Panel or Jury is of 12, there may be a Decem, or Octo Tales, &c. Or in any Attaint where the Jury is 24, there may be a Viginti Tales, &c. But in Indictments and Appeals that touch life, a Tales may be of a greater number than the principal Panel. Ibidem.

Also every Tales must be an even Number. Ibidem.

And they must be others of the same sort that the principal were of. Ibidem.

Issues returned upon Painpernoys or Pledges, &c. See antea tit. Issues.

*Estreats sera  
deliver in Ex-  
chequer yearly  
at Mich.*

By the Statute made 51 H. 3. de Scaccario, all the Kings Courts, Justices, Commissioners, and others, shall deliver into the Exchequer (at Michaelmas yearly) the Estreats of Fines and Amerciaments made, assessed or taxed before them, and of all issues and other things wherefore the Estreats are wont to be delivered there, &c. And from thence they shall make process against the parties to answer thereunto, and to satisfy the King of that which is done unto him.

The Commissioners of Sewers shall also yearly (at Michaelmas) deliver their Estreats into the Exchequer, 13 Eliz. c. 9.

Also the Estreats of the value of the Cattle forfeited in case the Secunda Superoneratione shall be put into the Exchequer by the Justices.

See Plus hic antea titulo Fines.

*Vic' ne leviet  
sans garr'.*

No Sheriff, &c. shall levy any issues other than he hath warrant for out of the Exchequer, by the Estreats of the Justices; neither shall the Sheriff be charged with any other issues than those for which he shall have such warrant out of the Exchequer. And in those Estreats every Pan shall be charged for issues forfeited like as of amerciaments. And by the Stat. 43 E. 3. cap. 9. Sheriffs must levy their Issues by their Extracts under the Seal of the Exchequer, upon pain to yield treble damages to the party grieved, and to make Fine to the King.

*South Seal.*

And yet (as Mr. Lambert telleth us) The Estreats of the Justices of Peace be now an immediate warrant for the Sheriff, to levy, not only the Fines and Amerciaments, but also all other issues, penalties, losses, forfeitures and Sums whatsoever, arising before them, (And therefore whatsoever Sums are to be Estreated into the Exchequer) the same the Justices may now levy upon the said Sheriff Estreats,  
Lambert

27 E. 1. c. 2.  
P. Sher. 19.

And note, that these *Estreats* of the Justices (being made by the Clerks of the Peace out of their Records) are to be indented by the Clerks of the Peace, and by them to be delivered to the Sheriff, and to the Barons of the Exchequer, Lamb. ibid.

But the Sheriff in many Counties is herein wronged by the Clerks of the Peace, who receive all the Fines, and thereout (pay or might pay) the Justices Wages, and then deliver the rest to the Sheriff, and should make his *Estreats* accordingly; whereas many Clerks of the Peace put up their surplusage (if there be any) pea sometimes all into their own purse, and the Sheriff pays it to the King, and never hath it, Wilk. 39.

7 H. 4. c. 3.

And whereas in former times divers did lose issues, fines, and amerciaments in the King's Courts (at the suit of any Party) and also issues and amerciaments in Quenets and Juries, wherein they were impannelled betwixt party and party, whereupon the Bayliff, &c. which gathered the green war, did levy the same issues, fines, and amerciaments by *Estreats* in obscure and ambiguous words, not containing the Sum lost, nor making mention of the cause of the loss, nor the day of the term, nor betwixt what parties, nor the nature of the Writ in which the same issues, fines, and amerciaments were lost, so that the said Officers did levy the Sum two or three times, and sometimes the double Sum contained in their *Estreats*; for remedy whereof the Statute made Anno 7 H. 4. c. 3. hath enacted, That the Clerks of the *Estreats* in the Courts or places where such issues and amerciaments shall be forfeited, shall make the Rolls of the *Estreats* of such issues and amerciaments distinctly, by express words of the cause of the loss or forfeiture, of the term, of the year, and the nature of the writ or action, and betwixt what Parties such issues and amerciaments be or shall be lost, and that as well in the King's Suit as in the Suit of the party.

*Estreats de-  
fective.*P. *Estreats* 2.*Le forme del  
Estreats.*

And the Sheriff must in his Warrants to his Bayliffs, express also the cause of the forfeiture, &c.

27. El. 7.

P. Jurors 34.

And now by the Statute of 27 El. cap. 7. the Sheriff in his Return, is to set down the dwelling place of every Juroz, and no extract of issues against any Juroz shall be delivered out, or put in ure, without such addition as is put in the original pannel (or Tales) wherein such Juroz shall be returned; and none of the Sheriffs Officers shall collect or gather any issues so extracted of any other person or persons than of such persons as (by virtue of the said *Estreats*) is of right chargable with the payments thereof, upon pain to forfeit 6 l. 13 s. 4 d. to the King and party grieved.

*No levies sinon  
de droit person.*

## C A P. XCI.

## Issues.

**N**Ote that these Issues returned and lost in respect of non-appearance of the Defendant or persons impannelled, &c. shall be forfeit to the King, and (by the *Estreats* out of the Exchequer) shall be levied by the Sheriff to the King's use, Br. distrels 41. Fitz. 59. b.

And with these issues, as well in these Cases, as in any other Case of a Distress infinite, the Land is chargable into whose Hand soever it comes after. Finch 353. as appeareth by that which followeth.

U u

Sur

Sur que tiels Issues serra servie per le Vic. &c.

Forfeit al Roy.  
Sur que serr'.

**S**I home soit impannell, & puis fait seoffent in fee de son terre uncore le 12 H. 7. 4. a. terre serra lie al issues que il perder per default, en apres pendant cel bief, Vavisor (12 H. 7.) Sed Davers & Wood contra: Mes per eux, lon home est distrein & puis alien son terre, cest terre serra charge, & liable in les mains le seoffee, des issues pendent le proces apres le seoffment, &c. Br. Challenge 160. Vide Co. Lit. 102. b.

Sur Purchasor.  
Sur issue in  
taile.  
Sur cestuy in Re-  
version.

Le heir in tail serra charge ove l'issues perde per son pere in son vie, & ceux issues serra levie sur le terre taile, Br. Issues 15. 23.

Tenant pur vie est impannell sur Furie, & perde issues & devie, le terre serra charge ove ceux issues, & ils serra levy sur le possession de cestuy in reversion, Br. issues 23. Dr. & St. 37, 38. Finch. 59.

Sur Feme.

Home seisie in jure uxoris, est impannell, & perde issues, & devie, le terre serra charge ove ceux issues, & ils serra levie sur le possession del feme, Br. Issues 23. Dr. & St. 38.

Successor.

Si issues sont retorne sur Ev'esques &c. & puis il est remove, son successor serra charge del issues, Br. Issues 25. Finch. 59.

Leffe.

Si home ad perde issues, & fait lease pur ans de son terre, & le Vic re- 7 H. 6. 6. f. 9. torne le lessor in issues, le vicount payer eux luy mesme; Et uncore le Vicount poit aver retorne le rent in issues: Mes il ne poit distrein le termor ou lessiee durant le terme, Br. Issues 5.

Estr.

Si home ad perde issues, & l'avers del estranger vient sur le terre, semble Dr. dist. 41. que le Vicount poit distrain ceux avers del estranger pur ceux issues, car le terre est charge del ceo: mes semble que le Beasts distreine covient estre le- vant & couchant, Vide Dr. & Stud. f. 15. a. F. N. B. 101. Br. Distr. 66. vide 5 H. 7. 1. moratur in lege.

Joynt-tenant.

Si lun Joynt-tenant perde issues, & le avers de son companion vient sur le terre, ceux avers ne serra distreine par ceux issues: car l'avers de son companion fueront eins per droit, lon l'avers del estranger fuer' la per tort.

Et nota que touts les ters que Furor ad al temps del Venire fac. serve sur luy, serra lies a ses issues pur avantage le Roy: Et sil aver nul ter. al temps del Venire fac. servie, le Vic. que retorne luy in issues serra charge de pay tiel issues luy mesme: Et si tiel retorne fuit pur son Predecessors, le procchein Vic. aver brief de disceit vers son Predecessors.

Et si le ter. le Furor soit recover vers luy, Ou que il aver ceo a terme auser vie, & que cestuy que vie & mort, donque le Vic. doit retorne ceo special matter & issint Nihil habet. Fitz. Return 13. hic antea cap. 78.

Mes le Vic. serra estopp. de retorne Nihil, lon issues fuer. retorne per luy devant.

## C A P. XCII.

Now concerning the choosing and returning of Knights and Burgeesses of the Parliament; and for levying of their Wages: and what the Sheriff is to do therein.

Parliament.

**B**y the Statute made 5 R. 2. c. 4. every person (be he Archbishop, Bishop, Duke, Earl, Baron, Knight, Citizen, Burgess, or other) 5 R. 2. shall upon Summons come to the Parliament, &c. And if any Sheriff be negligent in making his Returns of Writs of the Parliament, or that he leave out of the said returns any Cities or Boroughs, which be bound, and of ancient times were wont to come to the Par-  
liament,

liament, he shall be amerced, or otherwise punished in manner as was accustomed to be done, &c. and it seemeth now by the Stat. made 32 H. 6. cap. 15. that the Sheriff for every such default, shall incur the pain contained in the Stat. made 8 H. 6. cap. 7. which is to pay 100 l. to the King, and to have one years imprisonment, &c.

After such time as the Sheriff hath received the King's Writ for Summons of the Parliament, and Election of the Knights, &c. the Sheriff (or his Under-Sheriff) before his next County Court, is to make out his Warrants, to his Bayliffs of every Hundred, commanding them thereby to summon or warn the Freeholders within their several Bailiwicks, to be at the next County, and there to make choice of their Knights, &c. Or else the Sheriff at some Quarter-Sessions of the Peace, or some other general meeting of the County (to be between the receipt of the King's Writ, and his next County) may give publick notice thereof to the Freeholders. *Mes si le Vic. ne faire les Freeholders de faire summon, ore sil ne done Notice semble que le Vic. sera puny come est avant dit.*

But there are divers mischiefs in the choosing of these Knights for the Parliament, worthy of consideration.

After the Sheriff hath received the King's Writ for the choosing of these Knights, the Sheriff at his next County-Court, and betwixt the hours of eight and nine before noon, is to proceed to the Election without collusion, upon the pains limited by the Statute.

Now first the Sheriff having received this Writ, often concealeth it, and giveth either no Warning, Summons, or Notice thereof (or at least very small Notice is given) to the Freeholders; so that very few can be present to attend the Election.

Next some few being present (and perhaps laboured on purpose to be there) the Election is hastily oftentimes made by these few (with more haste than good speed) And before that the rest of the Freeholders be come in, and the Sheriff by one of the Clock is gone, and the Election made and so returned.

Thirdly, the extraordinary labouring of Voices before-hand: where-as this Election should be free.

Again, where this labouring for Voices is, divers are sent for of new to give their Voices therein, who were neither present at the reading of the said Writ nor during the hours appointed, yea perhaps come not in till the next day.

7 H. 4. c. 15.

By the Statute made 7 H. 4. c. 15. it was enacted that the Election of the Knights of Counties for the Parliament, shall be made in the form following, *sc.* At the next County to be holden after the delivery of the King's Writ to the Sheriff, for the election of Knights of Parliament, Proclamation shall be made by the Sheriff in the full County of the day and place of Parliament; and that all they which be there present (as well suters duly summoned for the same cause, as others) shall attend and in full County shall proceed to the election of their Knights for the same County for the Parliament freely and indifferently, notwithstanding any request or commandment to the contrary. And after that they be chosen, the Names of the persons so chosen (be they present or absent) shall be written in an Indenture under the Seals of all them that did chuse them, and tacked to the same Writ of Parliament, which Indenture so sealed and tacked shall be holden for the Sheriffs return of the said Writ, touching the Knights of the Shires; and in the Writs of Parliament to be made hereafter this clause shall be put: *Et electionem tuam in pleno comitatu tuo factam, distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerunt nobis in cancellariam nostram ad diem & locum in brevi contentum certitices indilate,* 11 H. 4. 1. 6 H. 6. 4. 23 H. 6. 15.

*Proclamac<sup>n</sup>.*

¶ u 2

And

*Forf. le Vic.*

And after by the Statute made undecimo Henrici quarti capite primo, 11 H. 4. & 8 Hen. 6. cap. 7. It was farther ordained, that if it be found by any Enquest before Justices of Assise that any Sheriff shall make any return contrary to the tenor of the former Statute made, 7 H. 4. cap. 15. That then the said Sheriff should forfeit one hundred pound to the King, and have one years Imprisonment without Bail. And besides the Knights so unduly returned shall lose their Wages, &c. of old accustomed: But yet the Sheriff and Knights may have their Traverse to such Enquests, &c. 6 H. 6. cap. 4. & 8 H. 6. cap. 7. Also the Sheriff may be sued for Perjury in the Star-Chamber, for such false return. Dyer 167. hic cap. 2.

Dyer 168.

Again, by the Statute made An. 23 H. 6. cap. 15. The Sheriff making any return contrary to any of these Statutes, shall forfeit another hundred pound to the other person chosen Knight for the same Shire, and not duly returned.

*Queux persons  
serra assis.*

By the Statute made 1 H. 5. C. 1. & 8 Hen. 6. It was enacted, That none should be chosen Knights of the Shire, unless they be resident within the same Shire where they shall be chosen, the day of the date of the Writ of the Summons of the Parliament. And by another Statute made 23 H. 6. the Knights of the Shires for the Parliament, must be notable Knights, or such Esquires or Gentlemen born, of the same County, as be able to be Knights; and no man may be such Knight which stands in the degree of a Peoman or under. 1 H. 5. 8 H. 6.

But no Sheriff, during the time of his Sheriffwick, may be chosen Knight or Burgeles of the Parliament (for the same County, or for any other County, as it seemeth.) See the form of the Writ for the Choosing of Knights, hic postea.

Also the Mayor of a City or Town Corporate, shall not be chosen to be Burgeles or Citizen for the Parliament, Br. Parliament 7.

Persons attainted of Treason or Felony, being chosen to be Knights, Citizens or Burgeles of the Parliament, it seemeth the Sheriff ought to return them. See 1 H. 7. f. 4. Br. Parliament 37. Where divers Knights and Burgeles were attainted of Treason by a former Parliament, and by the Opinion of all the Justices, those Knights and Burgeles were not to sit in the Parliament House, until the cause of their Attainder were reversed, but after they might sit.

But yet a Man attainted of Treason, or Felony, or Outlawed, ought not to be chosen a Knight or Burgeles for the Parliament: For all Knights and Burgeles ought to be Legales homines.

Neither ought any Man that is in Execution for Debt, &c. to be chosen a Knight or Burgeles for the Parliament, Crompt. *Author. des Courts* 11. And yet such persons being chosen, it seemeth that the Sheriff ought to return their Names.

Also the choosers of the Knights for the Parliament ought to be only of such persons as are resident, and dwelling within the said Shire, day of the date of the said Writ, 1 H. 5. 1. & 8 H. 6. 7.

Also the choosers of Burgeles for the Parliament, must be only of Citizens and Burgeles resident, dwelling and free, in the same Cities and Burroughs.

*Effors quex.*

And yet if a Man have two dwelling Houses in several Shires, and a Family or Servants at each House; or if a Man keep his Family in one County, City or Burrough, and abideth in Service in another County, &c. in both these Cases he may be a chooser of the Knights of the County, or of the Citizens, or Burgeles of the City or Burrough, where he keepeth his Family; for he shall be said in Law to dwell in each of the said Counties or Burroughs, &c. (But he must have 40 s. Freehold, where he is in Service, &c.) Crompt. *Author. des Courts* 3.

Also

Also a Freeman or Burghers of a Town Corporate, having 40 s. Freehold Lands or Tenements within the County (per annum) may be a chooser of the Knights of that Shire, &c. in which the Borough where he dwelleth is. And so one Man may have a voice, and may be a chooser of the Knights or Burghers in two several places, &c.

Vide hic f. 199.

Note, that this Election of Knights and Burghers, may be by Election comens, voices, or holding up hands, or by any other like way whereby it may be discerned who hath the greater number, Plowd. 123. & 128. b. Bucklie's Case.

8 H. 6. cap. 7.  
10 H. 6. c. 2.

Also by the said Statutes made 8 H. 6. & 10 H. 6. It was Ordained, That no person shall be a chooser of the Knights for the Parliament, except he hath Freehold Lands or Tenements within the same County, to the value of forty shillings by the year at the least above all charges: And that such as have the greatest number of Voices of them, which may spend forty shillings per annum as aforesaid, shall be returned Knights for the Parliament for the same County, by Indentures sealed between the Sheriff and the said choosers: and the Sheriff hath power (given to him by the same Statute of 8 H. 6. 7.) to examine upon

*Effloris jursus.*

Dath every chooser, how much he may expend by the year, if he doubteth thereof. And so the Sheriff is here made a Judge in this Case, i. e. to examine and judge of the ability of these choosers of the Knights for the Parliament. But for that no person shall be a chooser of the Knights for the Parliament, except he hath Freehold Lands or Tenements, to the value of forty shillings by the year, above all charges, &c. To avoid many ambiguities and doubts which have arisen concerning these words Lands or Tenements, you must understand that these words are thus to be taken or construed.

First, he that hath no other Freehold (or Inheritance) but Advowsons of Churches, though they be of the value of 40 s. (or 40 l.) by the year, yet thereby he hath no such sufficiency, nor such Freehold Land, or Tenements, as that thereby he may be a chooser of the Knights of Parliament, &c.

He which hath no other Freehold than Common of Pasture, though that be to the value of 40 s. per annum, yet he may be no chooser: But he which hath a Freehold House or Lands, of the yearly value of 30 s. and besides hath thereto belonging a Common of Pasture appendant, to the yearly value of 20 s. he may be a chooser, &c.

Otherwise it is, if his House be a new erected Tenement, or erected within the time of Memory; for that Common Appendant must be by prescription; and therefore except such House be of the yearly value of 40 s. besides the Common, it enableth him not.

If a Man hath a Freehold Estate of Lands or Tenements, in the right of his Wife, or *pur terme de autre vie*, of the yearly value of 40 s. it is sufficient.

And yet if after the Return the Land be evicted, or that the Wife, or *cestuy que vie* do die, he may be challenged, Co. Lit. 272. b.

If a Man hath a Free Warren of Conies, the which Communibus Annis, is worth 40 s. per annum, this is a sufficient Freehold, &c.

If a Man maketh 40 s. by the year (Communibus Annis) of his Wood-sales, Cole-mines, Tythes impropriate, or the like, being his Freehold, these are sufficient, &c.

But if A. hath Lands to the value of 40 l. per annum, and letereth the same out to another for Life, reserving no Rent, or but 20 s. or 30 s. Rent

Rent per annum, this seemeth not to be sufficient Freehold for A. during the term, &c. to give his Vote.

Yet if he letteth such his Lands to another but for years (though for divers years) reserving only 20 s. or 30 s. Rent per annum (or absque aliquo reddendo) during the said years, yet here he may be a chooser, &c. in regard of the Freehold in him.

If Lands be letten for years, the remainder to A. in Fee-simple, or in Fee-tail, here A. may be a chooser, &c. for the Freehold which is in him, if the Lands be worth 40 s. per annum.

If a Man hath 40 s. Rent per annum, or an Annuity of 40 s. per annum issuing out of Lands during his Life, this is sufficient.

Note, that by the Common Law, all Freemen of England, had a Voice in the Election of these Knights, within the Counties where they dwelt: But now by these Statutes of 8 H. 6. & 10 H. 6. they are restrained to such as have 40 s. Freehold per annum, within the County, &c.

Again, it seemeth they must be such Freeholders, as do contribute to the Wages of the Knights of the Shire: or else such as are Suters to the County Court.

Clergy-men, for their Spiritual Livings, are holden to have good Voices in the Election of these Knights.

Fellows of Houses or Colleges in Universities, are holden to have no Voices (in this Election of Knights) for or by reason of their Chambers or other Avails, &c. in their Colleges.

Gentlemen of the Houses of Court, or Chancery, are holden to have no Voices herein, by reason of their Chambers there.

Note, that the Election of Knights for the Parliament, ought to be made by the Sheriff in his full County; and between the hours of eight and eleven before noon, without collusion, upon the pains above limited, and this by the Statute, 23 H. cap. 15.

And all such as be choosers of these Knights must be present in the County Court, between the said hours of eight and eleven.

Quere, If they ought not to be present at the reading of the said Writ of the Summons of the Parliament.

If the Election of these Knights be made by the Freeholders in the full County, between the Hours of eight and eleven, as aforesaid, although the Sheriff shall make his Return, and seal his Indentures afterwards, and in another place, yet it is good.

So then Sheriffs ought to make due Election of Knights for the Parliament, by the Freeholders of the County, and in open County Court, and between eight and eleven a Clock in the forenoon, and ought to return for Knights of the Parliament, such persons as are so chosen by the greater number of Freeholders (dwelling within the said County) which may expend forty Shilling per annum, at the least, within the same County, upon the pains above limited: See Dyer f. 60. where Bronker Sheriff of Wiltshire was sued in the Star-Chamber, upon an Information of Perjury at the King's Suit, for a false Return of Sir John Tbin, to be a Knight of the Parliament for the said County, where in truth, Penraddock was chosen by the greater number of the Freeholders in the said County, in deceit of the County, and of the whole Realm.

Note, that such only are to be Knights of the Parliament, as shall  
be

be chosen by the greater number of the Freeholders present in Court, as aforesaid; and therefore if the Sheriff shall Return any other, upon complaint thereof made to the House of Commons, they, after Examination and due proof hereof, may and will cause the Sheriff to amend his Return, &c. and besides they will punish the Sheriff; or may cause a new Writ to be sent out, and so a new Election to be made, where they shall see cause.

The Citizens and Burgesses of Burroughs, ought to be chosen of persons resident, dwelling, and free, in the same Cities and Burroughs, and of none others, 1 H. 5. cap. 1. tamen aliter in usu.

23 H. 6. c. 15.  
Cromp. 208.  
P. Parl. 5.

Also every Sheriff after the Receipt of the King's Writ for summoning of the Parliament, for the Election of Knights of the Parliament, ought forthwith to make out his Warrants under the Seal of his Office to every Mayor, and Bayliffs of Cities and Burroughs, within the County, reciting in his said Warrants the Writ of Parliament, commanding them thereby to chuse Citizens and Burgesses to come to the Parliament: (i.e. if it be a City to chuse Citizens for the same City by Citizens; and if it be a Burrough to chuse Burgesses by Burgesses or Främen of the same Burrough.) And those Mayors and Bayliffs must make a lawful return of that Precept to the Sheriff, by Indentures made between them and the Sheriff of their Election, and of their Names which are elected. And the Sheriff must set his Hand and Seal of Office to the one part of the Indentures, and then deliver it to the Mayor, or Burgesses, or Citizens to be kept, and to the other part the Mayor, or Citizens or Burgesses must set their Hands and Seals, and deliver it as their Deeds to the Sheriff, to be certified and returned by him, with the Writ of Summons, to the Clerk of the Crown (who will have 4 s. for his Fees for every Indenture.) And the Sheriff ought to make a good and true Return of all this i.e. of the said Writ, and of every such return to him made by the Mayors, &c.) upon the pains hereunder limited.

23 H. 6. c. 15.  
Cromp. 207.

Note, that if the Sheriff shall do any thing contrary to this Statute of 23 H. 6. 15. (concerning the Election of Burgesses, or due returning of them,) or of any other Statute made for the Election of Knights to come to the Parliament, he shall incur the pain of one hundred pound to the King, and Imprisonment for one Year, without Bail; and further shall pay to the party so chosen Knight, Citizen or Burgess, and not by him duly returned (or to any other person, who in default of such Knights, Citizens or Burgesses, will sue) one other hundred pounds, to be recovered by Action of Debt, against the said Sheriff, his Executors or Administrators.

*Mes ils doivent commencer leur action deins 3 mois apres le dit Parliament commence; Et sil ne issint fait, ou ceo ne prosecute ove effect sans fraude, aucun autre que voila avera le suite pur le dit 100 l. come le Chevalier averoit; Et Cost de suite auxi serra agard al dit Chevalier, ou al autre que suera in son default, 23 H. 6. cap. 15. Vide Dyer 113. & Plow. 118.*

*Si aucun Mayor ou Bayliff fait untrue Returne (al Vic. ils forfeiter 40 l. al Roy, & al party, (i.e. al Citizen, ou Burges nient retorne) autre 40 l. Stat. 23 H. 6. cap. 15.*

*Auxi si un Burges soit apres fait Mayor d'un ville; Ou si Chevalier ou Burges de Parliament soit maladie, ceux sont sufficient causes de elect novels; Et al Parliament tenus per Adjournment Anno 38 H. 8. ils fairoient accordant per brief le Roy & ceo fuit admit & accept. Br. Parliament 7.*

Now

Now the Names of the said Knights shall be returned into the Chancery by Indenture sealed between the Sheriff and the Choosers of the Knights for the Parliament, in manner following.

*The Form of the Indenture for the Knights of Parliament.*

**H**ÆC Indentura fact. in pleno Comitatu Cantabr. tent. apud castrum Cantabr. die Jovis 30 Maii Anno Regni, &c. (reciting the King's Stile at large) inter A. B. Milit. Vic. Comitatu. præd. ex una parte, & J. Cage Milit. T. Pal. Armig. & M. D. R. T. & J. B. Armig. &c. & multis aliis personis Comit. prædict. & elector. duorum milit. ad Parlamentum in breve huic Indenturæ consut. specificat. ex altera parte, qui ut major pars totius comitatus prædict. tunc ibidem existens, Jurat. & examinat. secundum vim formam & effectum diversorum statutorum inde ædit. & provisor. eligerunt Ed. Peton Milit. & Bar. & Johannem Cutts Milit. infra comitat. præd. commorantes gladiis cinct. milites, habiles & magis idoneos, & dicer. dantes & concedentes præd. duobus milit. plenam & sufficientem potestatem pro se & tot. comitatus præd. ad faciend. & consentiend. hiis quæ ad Parlament. in dict. brevi content. de communi consil. Regni dict. Domini Regis nunc Angliæ, contingerit ordinari, super negotiis in dicto brevi spec. In cujus rei testimonium uni parti hujus Indent. penes dictum Dominum Regem remanentis partes præd. sigilla sua apposuerunt, alteri vero parti ejusdem Indent. præd. Vic. sigill. suum apposuit, datum die Anno & loco supradict. &c.

*The Form of the Indenture for the Citizens or Burgeses.*

**T**His Indenture made, &c. (reciting the day and year, and the King's Stile at large, as before, &c.) Witnesseth, That by vertue of a Warrant to me directed from Sir A. B. Knight, Sheriff of the County of *Cambridge*, for the electing and chusing of two Burgeses, Men of good understanding, wit, knowledge and discretion, for causes concerning the weal publick of the Realm, to be at his Majesties High Court of Parliament to be holden at his Highnesses City of *Westminster*, the day of next coming, I Mayor of the Borough or Town of *Cambridge*, with the whole assent and consent of the rest of the Burgeses there, have made choice and election of of Esquire, and of of Esquire, to be Burgeses for our said Borough of *Cambridge*, to attend at the said Parliament, according to the tenor of the said Warrant to me directed in that behalf. In witness whereof I have to these presents set our common Seal of our said Borough, the day and year first above written.

This Court of Parliament is the highest Court of England, where in the King himself sitteth in person, and cometh thither at the beginning and ending, and at other times at his pleasure.

Every Lord of the Parliament (as well Lord Spiritual as Temporal) is to be summoned severally, by the King's Writ, to come to the Parliament, at a certain day and place set down in the Writ.

*The Form of which Writ is as followeth.*

**C**arolus Dei gratia, &c. charissimo consanguineo nostro Johan. Com. Essex. salutem. Quia de advisamento & assensu Consilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ concernent' quoddam Parliamentum nostrum apud Civitatem nostram Westmonasterium 12 die Febr. proxim. futur. teneri ordinavimus, Et ibidem vobiscum, ac cum Prælati, Magnatibus & Proceribus dicti Regni nostri Colloquium habere, vobis sub fide & ligeanciis quibus nobis tenemini firmiter injungend' mandamus, quod considerat' dictorum negotiorum arduitate & periculis imminetibus, Cessante excusatione quacunque dict. die & loco personaliter interfutis nobiscum, ac cum Prælati, Magnatibus, & Proceribus prædictis, super dictis negotiis tractatur' vestrumque Consilium impensur' Et hoc sicut nos & honorem nostrum, ac salvationem & defensionem Regni & Ecclesiæ prædictorum, Expeditionemque dictorum negotiorum diligitis, Nullatenus omittatis. Teste meipso apud Westm. die Novemb. anno Regni nostri Angliæ, &c.

*The like Writ is to be made to every Bishop, Mutatis mutandis.*

*Also Writs are directed to the Sheriff of every Shire, for the choosing of Knights and Burgeses of the Parliament.*

*The Form of the Writ is as followeth.*

**C**arolus Dei gratia, &c. Vicecom. Com. Cantab. salutem. Quia de advisamento & assensu Consilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem Regni nostri Angliæ & Ecclesiæ Anglicanæ concernent' quoddam Parliamentum nostrum apud Civitatem nostram Westmonasterium 12 die Febr. proxim. futurum teneri Ordinavimus, Et ibidem cum Prælati, Magnatibus, & Proceribus dicti Regni nostri colloquium habere, Tibi præcipimus firmiter injungentes quod facta Proclamatione in proximo Comitatu tuo post receptionem hujus brevis nostri tenend' de die & loco prædict. duos milites gladiis cinctos, de magis idoneis & discretis Comitatus prædicti, Et de qualibet Civitate Comitatus illius duos Cives, Et de quolibet Burgo duos Burgeses de discretioribus & magis sufficientibus libere & indifferenter per illos qui proclam' hujusmodi interfuer' juxta formam Statutorum inde edit. & provis. Eligi facias, & nomina eorundem Militum, Civium & Burgesium, sic electorum, in quibusdam Indentur. inter te & illos qui hujusmodi Electioni interfuerint inde conficiend', sive hujusmodi Electi præsentis fuerint vel absentes, inseri: Eosque ad dict. diem & locum Venire fac. Ita quod iidem Milites plenam & sufficientem potestatem pro se & Communitate Comitatus prædict. Ac dictos Cives & Burgeses, pro se & Communitat. Civitatum & Burgorum præd. divisim ab ipsis habeant, ad faciend' & consentiend' hiis quæ tunc ibidem de Communi Consilio dicti Regni nostri (Deo favente) contigerint Ordinari super negotiis antedictis; Ita quod pro defectu potestatis hujusmodi, seu propter improvidam Electionem Militum Civium & Burgesium prædictorum, dicta negotia infecta non remaneant quovismodo. Nolumus autem quod tu, nec aliquis alius Vicecomes dicti Regni nostri aliquialiter sit Electus. Et Electionem illam in pleno Comitatu factam distincte & aperte sub Sigillo tuo, & Sigillis eorum qui

qui Electioni illi interfuerint, nobis in Cancellariam nostram ad dict. diem & locum certitices indilate, Remittens nobis alteram partem Indenturar<sup>r</sup> prædictarum præsentibus consuet<sup>a</sup> una cum hoc breve. Teste meipso apud Westm. die Novembr. Anno Regni nostri Angliæ, &c.

*The Forms of the Sheriffs Return upon this Writ; As also of the Indentures between the Sheriff and the Freeholders, And of the Indentures between the Sheriff and Burgeses.*  
See hic Cap. 57.

**A**ND note, that where the aforesaid Writ for summoning of the Parliament hath in it these words, De qualibet Civitate Comitatus illius duos Cives, that is to be intended where the City is no County in it self. For if it be a County of it self (as London, Norwich, and such,) then the Writ shall be directed to them, as it shall be to the Sheriffs of other Counties. Crompt. Author. des Courts f. 3.

And so every City which is a County in it self, shall have two Knights or Citizens, besides such Knights as are for the County in which the City is: As the City of Norwich shall have two Knights or Citizens, and the County of Norfolk (for the same County) shall also have two Knights, & sic de similibus. Crompt. Author des Courts 28.

But for that (by the words of the former Writ) the Sheriff is to cause to be chosen, and is to return de qualibet Civitate Com. duos Cives, & de quolibet Burgo duos Burgenles, &c. And again, for that by the aforesaid Statutes of 5 R. 2. 4. & 8 H. 6. & 23. it seems to be so penal to them, if any Sheriff shall leave out of his said Returns (of Writs of the Parliament) any Cities or Burroughs, which be bound and of ancient times were wont to come to the Parliament, I have therefore here inserted the names of all the Counties, Cities, Burroughs and Ports, which do send Knights, Citizens, Burgeses, and Barons to the Parliament of England, as I find them in 17. Crompton.

Bedfordshire.	{	Knights for the County		}	2
		The Burrough of Bedford, Burgeses			
Berkshire.	{	Knights for the County		}	2
		The Burrough of New-Windfor			
		The Burrough of Reading			
		The Burrough of Wallingford			
Buckinghamshire.	{	Knights for the County		}	2
		The Burroughs of Buckingham			
		The Burrough of Wickham			
		The Burrough of Alesbury			
Cambridgeshire.	{	Knights for the County		}	2
		For the University of Cambridge			
		For the City or Burrough of Cambridge			

Cornwal.	Knights for the County	Dunhivid <i>alias</i>		2
		Launceston		2
		Leskard		2
		Left Withel		2
		Truro		2
		Bodmin		2
		Helfton		2
		Saltaſh		2
		Gamelford		2
		Port Pigham <i>alias</i>		2
	The Burrough of	Westlow		2
		Crampound	Burg.	2
		Eatlow		2
		Penryn		2
		Tregonie		2
		Trevena & Boſſennye		2
		Saint Ives		2
		Fowey		2
		St. Germans		2
		St. Michael		2
Cheſterſhire.	Knights for the County			2
	The City of Cheſter		Citizens	2
	Knights for the County			2
Cumberland- ſhire.	The City of Carlile		Citizens	2
	The Burrough of Cocker- mouth		Burg.	2
Darbyſhire.	Knights of the County			2
	The Burrough of Darby		Burg.	2
Devonſhire.	Knights			2
	The City of Exceſter		Citizens	2
	The Burrough of	Honyton	Burg.	2
		Oakehampton		2
		Totnes		2
		Plymouth		2
		Barnſtable		2
		Plympton		2
		Taviſtock		2
		Darmouth		2
		Clifton and Hardneſs		
		Beralſton		2
		Tyverton		2
		Athburton		2
Dorſetſhire.	Knights			2
	The Burrough of	Pool	Burg.	2
		Dorcheſter		2
		Lyme Regis		2
		Melcomb Regis		2
		Waymouth		2
		Bridport		2
		Shaſtesbury		2
		Warham		2
		Corſ-Caſtle.		2

Durham.	{ Knights City of Durham	Citizens	2 2
Essex.	{ Knights The Burroughs of { Colchester Malden Harwich	Burgesses	{ 2 2 2
Gloucestershire.	{ Knights The City of Gloucester The Burrough of Cirencester The Burrough of Tewksbury	Citizens Burg. Burg.	2 2 2
Huntingdon- shire.	{ Knights The Burrough of Huntingdon	Burg.	2 2
Hertfordshire.	{ Knights The Burrough of St. Albans The Burrough of Hertford	Burg. Burg.	2 2 2
Herefordshire.	{ Knights. The City of Hereford The Burrough of Lemster The Burrough of Weobley	Citizens Burg. Burg.	2 2 2 2
Kent.	{ Knights The City of Canterbury The City of Rochester The Burrough of Maydeston The Burrough of Queenborow	{ Citizens Burg.	{ 2 2 2 2
Lancashire.	{ Knights The Burrough of { Lancaster Preston Liverpool Newton Wigan Clitheroe	{ Burg.	{ 2 2 2 2 2 2
Leicestershire.	{ Knights The Burrough of Leicester	Burgesses	2 2
Lincolnshire.	{ Knights The City of Lincoln The Burrough of { Boston Great Grimsby Stamford Grantham	Citizens Burg.	2 2 2 2 2
Middlesex.	{ Knights The City of { London Westminster	Citizens	{ 2 4 2
Monmouth.	{ Knights The Burrough of Monmouth	Burg.	2 2
Northampton- shire.	{ Knights The City of Peterborough The Burrough of { Northampton Brackley Higham Ferris	Citizens Burg.	2 2 2 2 2
Nottinghamshire.	{ Knights The Burrough of { Nottingham Estreatford Newark	Burg.	2 2 2

Nor-

Norfolk.	Knights for the County			2
	The City of Norwich		Citizens	2
	The Burrough of	Lynn Regis	Burg.	2
		Great Yarmouth		2
		Thetford		2
		Castle Rising		2
Northumberland	Knights			2
	The Burrough of	New Castle upon Tyne	Burg.	2
		Morpeth		2
		Barwick upon Tweed		2
Oxfordshire.	Knights			2
	The City of Oxford		Citizens	2
	The University of	Oxford	Burg.	2
		Banbury		2
Rutlandshire.	The Burrough of		Woodstock	2
	Knights			2
Surrey.	Knights			2
	The Burrough of	Southwark	Burg.	2
		Blechingly		2
		Rigate		2
		Gifford		2
		Gatton		2
Staffordshire.	The Burrough of	Haslemore	Burg.	2
		Knights		2
		The City of Lichfield		2
		Citizens		2
		Stafford		2
Salop.	The Burrough of	New-Castle under Lyne	Burg.	2
		Tanmworth		2
		Knights		2
		Salop		2
		Bridgnorth		2
Southampton.	The Burrough of	Ludlow	Burg.	2
		Wenlow		2
		Bishops-Castle		2
		Knights		2
		The City of Winton		2
		Citizens		2
		Southampton		2
		Portsmouth		2
		Petersfield		2
		Stockbridge		2
		Christ-Church		2
Somerfetshire	The Burrough of	Yarmouth	Burg.	2
		Newport alias Medona		2
		Newton		2
		Whitchurch		2
		Limington		2
		Andover.		2
		Knights		2
Suffolk.	The City of	Bristol	Citizens	2
		Bathe		2
		Wells		2
	The Burrough of	Taunton	Burg.	2
		Bridgwater		2
		Minehead		2
		Ilcester		2
		Milburn Port		2

Suffolk.

Suffolk.	{	Knights for the County			2	
		The Burrough of	Ipswich	}	Burg.	2
			Dunwich			2
			Orford			2
			Alburogh			2
			Sudbury			2
			Eye			2
St. Edmonds-Bury	2					
Suffex.	{	Knights			2	
		The City of Chichester	Citizens		2	
			The Burrough of	Horsham	}	Burg.
		Midhurst		2		
		Lewes		2		
		Shoreham		2		
		Brember		2		
		Steining		2		
		East Grenested		2		
		Arundel		2		
Warwick.	{	Knights			2	
		The City of Coventry	Citizens		2	
		The Burrough of Warwick	Burg.		2	
Westmerland.	{	Knights			2	
	The Burrough of Apulbie	Burg.		2		
Wiltshire.	{	Knights			2	
		The City of New-Sarum	Citizens		2	
			The Burrough of	Wilton	}	Burg.
		Downton		2		
		Hindon		2		
		Westbury		2		
		Hefsbury		2		
		Calne		2		
		Devyses		2		
		Chippenham		2		
		Malmesbury		2		
		Criklade		2		
		Bodwin		2		
		Lugderfale		2		
		Old-Sarum		2		
		Wotton Bassett		2		
		Malborough		2		
Worcester	{	Knights			2	
		The City of Worcester	Citizens		2	
		The Burrough of	Droitwich	}	Burg.	2
			Evilham			2
			Bewdley			2

Yorkshire.	Knights for the County			2		
	The City of York			2		
	{	Kingston upon Hull	{	2		
		Knaresborough		2		
		Scarborough		2		
		Rippon		2		
		Heydon		2		
		Burrowbridge		2		
		The Burrough of	Thuske	{ Burg.	2	
		Alborough	2			
		Beverley	2			
		Richmond	2			
		Malton	2			
		Northalerton	2			
		Pontefract	2			
Barons of the Cique Ports	Hastings	{ Furg.	Dover	{ Burg.	2	
	Winchelsey		2		Sandwich	2
	Rey		2		Hithe	2
	Rumney		2		Seaford	2
						2

Wales.	1.	Anglesey.	Knights 1	{	Furg. 1
		The Burrough of Beawmares.			
	2.	Carmarthen.	Knights 1	{	Furg. 1
		The Burrough of Carmarthen.			
	3.	Carnarvon.	Knights 1	{	Furg. 1
		The Burrough of Carnarvon.			
	4.	Cardigan.	Knights 1	{	Furg. 1
		The Burrough of Cardigan.			
	5.	Denbigh.	Knights 1	{	Furg. 1
		The Burrough of Denbigh.			
	6.	Flynt.	Knights 1	{	Furg. 1
		The Burrough of Flynt.			
	7.	Glamorgan.	Knights 1	{	Furg. 1
		The Burrough of Cardiff.			
	8.	Mount-gomery.	Knights 1	{	Furg. 1
		The Burrough of Mount-gomery.			
	9.	Pembroke.	Knights 1	{	Furg. 1
		The Burrough of Pembroke.			
	10.	Merioneth.	Knights 1	{	Furg. 1
		The Burrough of Haverfordwest.			
	11.	Radnor.	Knights 1	{	Furg. 1
		The Burrough of Radnor.			
	12.	Brecon.	Knights 1	{	Furg. 1
		The Burrough of Brecon.			

The total Number of the Pecher House of Parliament.

Knights	92
Citizens	48
Burgesses	378
Barons of the Cin. P.	16
<b>Total</b>	<b>534</b>

*The Knights  
Fees or Wages,  
&c.*

*Quorum persons  
attender.*

Also Sheriffs when they have received (Letters or) Writs for the levying of Expences of the Knights of the Parliament, at the next County Court, after the receipt of these Letters ought to make open Proclamation, that the Coroners and every chief Constable of the said County, and Bayliffs of every Hundred of the same County, and also all other which will be at the assessing of the wages of the Knights of the Shire, shall be at the next County there to be holden to assess the said wages; and the Sheriff, Under-Sheriff, Coroners and Constables, or Bayliffs of Hundreds, ought to be there in person to assess the wages upon pain of 40 s. to every one that maketh default; And then the Sheriff or Under-Sheriff, in the presence of them that shall come, and of the Suitors of the same County, (then being there in the full County) well and duly ought to assess every Hundred to that assessable, at a certain Sum by it self, and after they ought to assess every Village to that assessable, within the Hundreds, with a certain Sum, and if they make any assessment otherwise, they shall forfeit for every default 20 l. to the King; and besides 10 l. to any man which will sue in this case, with treble damages, &c.

But every Hundred must be so assessed by the Sheriff, &c. (to the payment of the said wages) so that the whole sum of all the Hundreds do not exceed the sum which shall be due to the said Knights: and every Village must be so assessed, so that the whole sum of all the Towns within any of the said Hundreds, do not exceed the sum assessed upon the Hundred of which they be, upon the pains before limited. Ibid.

It seemeth that every Knight of the Shire is to have the allowance of 13 s. 4 d. by the day, to be paid by the County (as aforesaid) whereof he is Knight, Powel fol. 223.

But Barons of the Cinque Ports, and Burghesses, have not used to have above 10 s. a piece by the day. Powell ibidem.

Also if any Sheriff, Under-Sheriff, Bayliff, or other Officers shall levy (for the cause aforesaid) more money of any Village, than that whereunto they be assessed, they shall forfeit (for every default) to the King twenty pound, and ten pound to any other which will sue for the same, besides treble damages for the cost of their suits.

The Sheriff well and duly shall levy the monies so assessed upon the Villages as speedily as they well may after the said assessing; and the same shall deliver to the said Knights according to the said writs upon the penalties aforesaid: And the Sheriff may distrein for the same F. Avow. 260.

But such expences of Knights shall not be assessed nor levied for any other Villages, Seigniories or places, but of such whereof it hath been anciently levied. See 8 R. 2. Fitz. Avow. 260.

Also (it seemeth) that the Freeholders and Tenants of such Lords, &c. as come to the Parliament, are not to be assessed to such charges for their Tenancies or Lands holden of such Lords, except they have been so charged time out of mind. And yet the Statute Anno 12 R. 2. cap. 12. if any other Lord, or any other man Spiritual or Temporal, hath purchased any Lands, Tenements or other possessions that were wont to be contributory to the such expences, before the time of their said purchase, the said Lands and Tenements, and the Tenants of the same, shall be contributory to the said expences, in such manner as the said Lands, &c. were wont to be before the said purchase. Vide 8 R. 2. Fitz. Avowry 260. & 11 H. 4. fol. 2.

But Copyholders (or Villains) shall not be contributory to the said Wages, or Expences, Br. Parliament 96. Register 261. Fitz. 228. f.

Also the free Tenants and Tenants at Will in Ancient Demesne, as also

P. Parl. 12.  
23 H. 6. c. 11.  
Crompt. 207.

23 H. 6. c. 11.

Ibid.

Ibid.

Register 191,  
192.

8 R. 2.  
Avowry 260.  
12 R. 2.

also the Lords ought to be acquitted of payments to the expences of the Knights of the Parliament, Fitz. 14. c. Br. Aun. Dem. 43. & Priviledg. 56. & 9 Co. Preface.

Also those Burroughs which do find Burgeses to the Parliament, shall not pay nor contribute to the wages or expences of the Knights of the Shire, except it be by Prescription, 11 H. 4. f. 2.

34 H. 8. c. 24.

Note, that by the Statute made Anno 34 H. 8. c. 24. the County of Cambridge, and the Inhabitants of the same, are discharged of all such Sums of Money, to be levied or paid for the Fees of their Knights of the Parliament for the said County; and the Manor of Burlewes lying in Madingley, in the said County of Cambridge, is charged with the payment of 10 l. yearly for ever, at the Feast of Saint Michael the Archangel, for the said Fees or Wages of Knights of the said Shire or County; and the Sheriff and two Knights of the Parliament of the said County, are incorporated for to sue for the same; and the said Knights and the survivors of them, shall have and receive the same to their own use, towards their Charges: And if both the Knights of the said Shire be dead, then the Sheriff of the said Shire for the time being, shall have the said Rent of 10 l. to his own use, until other Knights shall be chosen for the Parliament, &c.

Note, that for the Fees or Wages of the Knights for the Parliament, the Sheriff may distrain the Goods of the Town, or of any of the Town, &c. may distrain the whole Herd belonging to the Town, or the Cattel or other Goods of any particular person of that Town, 11 H. 4. 2. Br. distress. 95. & 8 R. 2. Fitz. Avowry 206.

*Mes quant le vicount (ou auter Officer) vient pur distreiner, & veia les avers, si l'owner des avers ou auter person eux chase hors del ville, semble le vicount ou Officer ne poet eux distrein in auter ville, Vide 16 E. 4. 10. Br. Distr. 51.*

Note also, That the Sheriff or other Officer may sell the distress taken by them for the Fees, Wages or Expences of the Knights of the Parliament: &c. hic antea tit. The King's Debts.

For Knights to be chosen for the 12 Counties of Wales, and Burgeses for every Burrough-Town, and the returning of them by their several Sheriffs, and for their Knights Fees, and Burgeses Fees, Vide Stat. 27 H. 8. cap. 26.

The Sheriff of every County there, shall gather the Wages of the Knights, &c. And the Mayor and other Head Officers of Cities and Burroughs there, shall gather their Wages of the Burgeses, &c. 35 H. 8. c. 11.

And for Knights to be chosen for the County Palatine of Chester, and Burgeses for the City of Chester, and the Returning of them by the Sheriff there, and for their Wages and Fees, &c. Vide Stat. 34 H. 8. c. 11.

## C A P. XCIII.

### *The Sheriff's Duty in executing the Writ of Redisseisin.*

Merton.

20 H. 3. c. 3.  
Fitz. 188. y.  
& 190 a.

**W**Here a Man hath recovered any Lands, Rent-service, Rent-charge, or Rent-seck, Common or other Tenements (by Assise of Novel disseisin, Mortdancer, Juris Utrum, vide Co. L. 254. or other Action, which pass by Juries and Verdicts, or by confession of the disseisor, or by any other manner, Co. L. 154.) and is put in possession thereof

by

by

by the Sheriff (by Writ de habere facias seisinam) and after the same Plaintiff is redisseised of the same Lands, Rents, Commons, or other Tenements by him by whom he was formerly disseised, then the disseisor shall have a Writ \* to the Sheriff, &c. by which the Sheriff shall be \* Sc. Breve de Redisseisin. commanded, that he, taking with him the Keepers of the Pleas of the King's Crown, &c. (the Coroners) and other Knights in his proper person shall go unto the Lands or Tenements, Pasture, or grounds whereof the plaint was made, and that he make before them (by the first Jurors, and other Neighbours and lawful Men) diligent inquisition thereof, and if they find him disseised again (as aforesaid) that then the Sheriff shall forthwith take such disseisor, and commit him or them to Prison, there to remain until the King shall discharge them, &c. And that upon a Fine to be made to the King for the Offence.

Inquisition.

Imprison.

But the Sheriff shall execute no such plaint (or thing) without the King's special Writ. 20 H. 3. c. 3.

Note that the Writ de Redisseisin, is, Scire facias præfatum S. (the disseisor) & D. qui terram illam nunc tenet, quod inquisitioni interfuit, &c. And therefore the Sheriff (upon this Writ) ought to summon the said Parties (i.e. the disseisor, and the *ter tenant*) to be before him at the time when he maketh this Inquiry; but the summoning of the *ter tenant*, seemeth only to be, to give in evidence, &c.

And for that by the former Statute of Merton, made 20 H. 3. there was no remedy given or provided in case where the Sheriff had delivered the party without the King's Licence, &c. therefore by another Stat. made at Marlbr. Anno 52 H. 3. it was ordained, that if the Sheriff shall deliver any such persons as are convicted of Redisseisin, without the special commandment of the King (or Judgment, &c. of the Kings Court) the Sheriff shall be grievously amerced, and besides, the parties so delivered shall be grievously punished for their wrong and trespasses, 52 H. 3. c. 8. Fitz. 189. c.

Dyer 61. 2.

Also by the Statute of Westm. 2. (made anno 13 E. 1. cap. 26.) the Redisseisors shall not be repleviable by the Common Writ, i.e. they shall not be delivered or let go out of Prison (by the Sheriff, &c.) by the Common Writ de homine Repleg. nor by any other Writ, nor without Writ, but shall remain in prison until he be discharged by the King's special commandment, which must be in manner following, viz. Where a Man is convicted of Redisseisin, he ought to make his Fine in the Chancery, and from thence to have a Writ directed to the Sheriff, making mention that he hath made his Fine with the King, for the Redisseisin, and commanding the Sheriff to enlarge him, &c. And this was the Opinion of the Court (except Inglefield) anno 18 H. 8. f. 1. for that the words of the Statute of Marlbr. cap. 8. be, that such Offenders shall not be delivered without the King's special commandment, &c. And this special commandment cannot be but out of Chancery: But in the same Case Inglefield held, that the Justices of the Common-Pleas, having the Record before them (by a Certiorari) that the Justices there had power to assess the Fine, and to award such a special Writ out of that Court to the Sheriff, to set the Prisoner at large; and that such a Writ issuing out of that Court, was the special commandment of the King; and that the meaning of the Statute was only to prohibit the Sheriff to assess the Fine, and not to prohibit the Justices, who are Justices of Record so to do, Ideo quære.

8 H. 8. 81. f. 1.

Special commandment le Roy.

But note, that the Sheriff is not to dispute the Authority of the Court, &c. See 6 Co. 54. & hic antea.

And yet, See Fitz. 190. f. If a Man be convicted before the Sheriff of Redisseisin, before he shall be delivered out of Prison, he ought

ought to remove the Record into the Kings-Bench, and there to make his Fine with the King, &c.

Nota, Auxi lou home est in prison come conviët de Redisseisin, ses amies poent venir in Chancery, & monstre que tiel home est imprison in tiel lieu, &c. per reason d'un Redisseisin, & que ils sont venus, preyon que ils poient faire un Fine pour luy, accordant al Stat. Et que le Seign. Chancellor voile estre please de granter un brief al Vic. del County lou il est imprison, rebersant que il ad fait un fine devant luy in le Chancery pour le Redisseisin, Et commandement le Vic. de enlarger luy come avantdit.

Auxi dicitur que ses amyes poient preyer d'aver un brief direct al Vic. commandant luy que il prist un fine del party issint in prison, & apres de luy lesser aler alarge. Vide Regiller 123. accordant.

Et sic ceo fine poet estre assés en le Chancery per le Seign. Chancellor; ou per & devant les Justices de lun Bank ou del auter (ils aiant le Record devant eux come avantdit; Ou in le pais per & devant le Vic. (come semble per force del brief le Roy; meismex ex Officio, nec sans brief le Roy ut supra.

Cestuy que est atteint de Redisseisin, serra prise & mise in prison pour la demurrer, tanque il ad fait gree, ou fine al Roy ut sup. par le Contempt, Et auxi rendra al party Plt. ses damages in duplo (sc. ses double damages) Et in le meane temps serra irreplegiabie, &c. & ceo est per force del dit Stat. de West. 2. 26.

Se cestuy qui est atteint de Redisseisin ne soit deins mesme le County (issint que le Vic. ne poiet luy prender) donque le Record serra remove, Et capiassera al Vic. del County en il est, &c.

If a Woman covert shall commit a Redisseisin, she shall be Imprisoned by the Sheriff, according to the Statute 9 Co. 72.

The reason of the punishment inflicted by the Law upon Redisseisors, or such as shall disseise others who are in by judgment of Law, is chiefly to avoid oppression, and that there might be end of suits, for otherwise malicious persons by their infinite verations would weary such as have right, and in the end compel them to relinquish and give over their right, contrary to the Rule and Reason of Law, and to the dishonour of the Common Laws of this Realm, which utterly abhor infiniteness and and protraction or delaying of Suits, 6 Co. f. 9.

West. 2. 26. Per Statutum de West. 2. c. 26. Tiels avera remedy per brief de Redisseisin, queux ont recover per default, reddition, ou in ascun auter manner sans recognition Affisar, sive Jurator, 13 E. 1. c. 26. Regula.

West. 2. 18. Auxy per mesme le Statute cap. 18. Tenant per Elegit avera brief de Redisseisin, sc. si il soit ouste, &c. il primes recovera per brief de Novel Disseisin & postea per brief de Redisseisin, si besoigne, Fitz. 189 i.

Auxi tenant per Statute Merchant ou Staple, avera brief de Redisseisin, &c. Stat. de Mercatoribus, 13 E. 1. Fitz. 189. i.

Et issint semble de tous auters, que ont Estate in terras, &c. per Judgment de Ley. Vide termes del Ley, tit. Elegit.

Quant brief de Redisseisin gist, Et vers que ne gist. Co. L. 154.

Auxi cestuy Stat. extend al Rent-charge ou rent Seck, car coment que ils sont encounter Common Droit, uncore home ad Freehold in eux, Co. L. 154.

Les parols del Stat. de Merton sont tic, Et ipse disseisitus per Vic. seisinam suam habuerit, &c. Ex quo notandum est que si disseisee entre sans estre mise in possession per le Vic. que il navera brief de Redisseisin; Et par ceo si le disseisee recover son seisin, & puis enter & apres est ouste per mesme le disseisor, icy il navera brief de Redisseisin, pur ceo que navoit seisin deliever a luy per le Vic. (per brief de Habere fac. seisinam) mes ad enter luy mesme aores son recovery, Vide Br. Redisseisin 5.

Si brief de droit Patent soit port in Anc. Demesne, Et le plt. recover, in ceo case si le plt. soit apres Redissei. &c. le plt. ne poet aver brief de Redisseisin, pur ceo que le vic. ne poiet Enter in Anc. Demesne; uncore vide hic cap. 70. & 72. que sur brief le Roy, le vic. poet enter en semblable Cases.

Auxi si le Seignior d'un Franchise aver Conusans in Assise, & puis le plt. est Redisseise deins mesme le Franchise, semble icy que le vic. poet enter in le Franchise, & fera Execution, &c. eo que ceo brief de Redisseisin est un Non Omittas, &c. Et uncore le vic. icy doit escrier al Bayliff del Franchise pur fair vener le Jury. Abr. d'Ass. 148.

Nota que sur brief de Redisseisin direct al Vicount, le Vic. doit seer in proper person (& nemy per Attorney, nec per son Southwic') car icy il est fait Judge de Record. 7 H. 7. 4. Br. Parliam. 95. & hic cap. 4.

And although upon this Writ of Redisseisin, the High Sheriff must sit in his own person, and be therein sole Judge, yet he must have two (Coroners at the least) to sit with him; for the words of the Statute of Merton are further, Et ideo mandetur Vic. quod assumptis secum Custodibus placitorum Coronæ Domini Regis, &c. Now these Custodes placitorum Coronæ be the Coroners, who must also joyn with the Sheriff in making up of the Record.

Sur brief de Redisseisin, si le Vicount prieigne l'inquisition devant luy mesme sole, Ou devant luy mesme & un Coroner & le Redisseisin est trouve, & le disfor' ouste, il avera Assise: Et si le disfor' in tiel case soit comit al prison per le vic. il avera action de faux imprisonment de ceo vers le Vicount. Car le inquisition fuit prise coram non iudice; car le Stat. de Merton c. 3. ac etiam le brief de Redisseisin direct al vic. dit quod assumptis tecum custodibus placitorum Coronæ, &c. Et cest parol (custodibus) in le plural number ne poet este satisfie ove un Coroner, si sont plusors que un in le County, mes duorum numerus sufficit. Vide 10 Co. 103. & 23 Ass. pl. 7. Br. Redisseisin 3. & Mr. Pl. f. 393. Fitz. Rediss. 2. Stamf. 53 c.

Mes in ceo case les Coroners ne sont my Judges de Record, mes aide al vic. ut supra, & le vic. solement est Judge, &c. Car si brief de Error soit port de cel Enquiry, le Record ne reberce my que ceo fuit fait devant les Coroners, mes devant le vic.

Et si le vic. voile faire un record sur le Redisseisin, & les Coroners voila faire auter, les Justices ne voient prendre le Record fait per les Coroners mes le Record fait per le vic. uncore Br. Deputy 20. le Vic. & Coroners judger ceo.

Auxi les parols del dit Stat. de Merton sont, quod assumptis secum custodibus placitorum, & aliis legalibus militibus, &c. per queux parols semble que le vic. doit prendre auxi ove luy auters Chivalers, ou loyal homes Inhabitantes propre a mesme le tenement, &c. de que le pleint est fait, Et devant les Coroners, & exu, per les primer Furors, & per auters vicines, ils feront le Inquisition.

Mes cel Inquisition ou Enquiry ne serra, le quel le plt. fuit dissei' ou nemy, mes le quel il fuit Redisseise.

Et le vic. doit fair un Record, sur le Redisseisin trouve per tiel Inquisition, Et de Retorne ceo, sc. que il ad enquire, &c. in le presence de tiel Coroners, & tiels auters Loyal homes, &c. per les primer Furors, & per auters, &c. 23 Ass. 7.

Also the Sheriff must return quod Accessit ad locum or ad Tenementa infrascripta, and not quod Accessit ad villam, 11 H. 4. 6. But he may return qd. apud S. (being the Town where the Land lieth) fecit inquisitionem, &c.

Auxi les parols del Stat. de Merton, sont que il ferra inquisition per primos juratores, & alios, &c. Et pur ceo covient que sont ij. del primer Furors al meins; & si tous les primer Furors sont morts, ou tous fors que ou, donque il que serra prise ne avera Redisseisin, &c. Tamen quatre, car corment que tous les  
primer

primer Jurors sont morts forsque un, dicitur que pur ceo que le brief de Redisseisin voet, tam de illis qui in prima Jurat. fuerunt, quam aliis, &c. que per ceux parols serra intend, si ascun de eux soit in vie, que le inquisition serra prise. Vide Fitz. Rediff. 11. 8 H. 5. 1. Lectur.

Auxi coment que tous les primer Jurors sont in vie, uncore le Vic. prender deux auters al meins; auterment le Inquisition prise devant luy est coram non iudice, & brief de error bien gift.

Les primer Jurors ne serront prise in le Redisseisin, sinon que ils passe sur le principal del action; & nemy sur enquiry de damages.

Le party poit aver challenge a les auter Jurors, mes nemy al primer Jurors. Vide Br. Challenge 27. & Keilw. 125.

Uncore dicitur que ou le Vic. impannel le Array, la le party n'avera my Challenge al array, pur ceo que le Vic. est Judge, & per intendment voet faire ovel droit as parties; Et auxi pur ceo que est forsque Enquest de Office. Vid. Keilw. 125. & Lectur.

11 H. 4. f. 6.  
8 Co. 152.  
7 H. 7. 4.  
Br. Parliam. 59.

Auxi semble per les parols del Stat. de Merton, acetiam per parols del brief (in propria persona, accedat ad terram) que le Vicount doit faire son enquiry, & prendre le Inquisition sur le terre ou tenements, de queux complaint est fait, & uncore si le Vicount tiender, & causer le Jure de vener & veier le lieu, terres, ou tenements, que donque il poit prendre & fair le Inquisition in auter lieu; car les parols del Stat. & del brief, esteant, quod accedat ad terram, &c. ceo est observe pur vener illuc, coment que lenquiry, & verdict soit al auter lieu: (mes semble doit este deins mesme le ville ou le terre gift.) Vide Fitz. Error 51. 64.

Br. Rediff. 5.

In Redisseisin in divers villes, le Vicount & Coroner ira al touts les villes, mes ils poient prender lenquest a lun ville tantum sc. in quel il pleist al Vic. per Ca. 40. Ass. p. 23. Issint est in brief denquire de wast in divers villes, quod vide hic antea tit. Wast fol.

11 H. 4. 56.

Auxi le Vic. poit varier del Retorn del Bailiff, & poit mitter sur le enquest tiels que ne fuer' retorn per le Bailiff, car le Vic. mesme est le person que fait larray, que auxi est Judge in le case: Et uncore lou le Vic. (in riel case) ferr son precept al Bailiff de retourner le Jury, que retorn' ceo, & il maund cest ret' come parcel del Record, per ceo le Vic. ad affirme le ret' del Bailiff, & icy si le Vicount varier del retorn le Bailiff (& prender lenquest per auters) cest semble destre error.

Nota que cest brief de Redisseisin, nest que enquest de Office. Br. Attaint 1, & 79.

Le Vic. ne poet resceiver Attorny pur nul party (in Redisseisin) sans brief come semble. Abr. d'Ass. fol. 148.

Le disseisor in Redisseisin pleder nul plee in barr: Car sil ad Releas pur le Redisseisin semble il avera Audita Querela, Ou Superfedeas, ove un Ceriorari de remover le matter, Et sil soit infeoff, il averra Attaint; Et si ad fait fine, il poet aver Superfedeas, &c. Tamen semble que le tenant del terre que est eins per title poet pleader, &c.

Auxi le Vic. n'ad poier de trier ascun plee hors de point de Redisseisin. Ne accepter ascun forein plee, mes fera accordant al brief que est son Commission, &c. Abr. d'Ass. 147. Keilw. 125. Vide

Si le Vic. ne voet Execute ceo brief, la gift Alias, & Plur. & Attachment a les Coroners. Fitz. 881. 1.

## C A P. XCIV.

*Where the Sheriff. &c. may break open an House, or break open the Doors, &c. to execute the King's Proces or Writ.*

**W**hen any House is recovered in or by any real Action, or by any Ejectione firmæ, there the Sheriff or Officers, upon an habere facias seisinam, or possessionem, may break the House and deliver Seisin and possession thereof to the Plaintiff, for that after Judgment it is no more (in right or in the Judgment of Law) the House of the Defendant or Tenant. 5 Co. 91.

Nea the Sheriff upon the Habere facias seisinam, may and ought to execute the Writ, although that indeed an Estranger be seised of the Land, and that neither of the Parties to the Writ were seised thereof. Plo. Com. Manxel's Case, f. 12, 13.

But the Sheriff, nor his Officers, cannot justify the breaking of any Man's House to make Execution upon a Capias ad satisfaciendum; nor break any House or Chest, &c. to make Execution by virtue of a Fieri facias; nor to execute any other the King's Proces upon the Body or Goods of any person, at the suit of any Subject (for any Debt, Damage, Trespass, or the like, for there it is but a particular interest of the party) and if he do, he is therein a Trespasser. But where the King is a party, there the Sheriff may justify the breaking of the House to do execution of his Proces, if he cannot otherwise execute his Proces; And yet first he there ought to make request to have the Door opened, and must withal signify the cause of his coming. 5 Co. 91, 92.  
13 E. 4. 9. Fitz. Bar. 110. Br. Execution 100.

Note, that in all cases where the King hath any interest, the Writ is Quod non omittas propter aliquam libertatem, and therefore the Priviledge of any Man's House will not hold against the King. But where the King hath no interest, but only a common person, there the Sheriff, although he make request to have the doors opened, &c. and that denial be made him to enter, &c. yet he may not break them, and so enter and do execution of his Proces; for by such means great inconvenience might arise, that Men in the night, as well as in the day, should have their Houses broken upon any feigned matter. For although that the Sheriff himself be a Man of especial note and worth, and his Office of great Authority and Trust, yet we see by daily experience, that all or the most part of the King's Writs are served and executed by their Under-Sheriffs and Wayliffs, which most commonly are persons of small worth and account.

And yet where the Sheriff shall break a Man's House or Chest, being locked, &c. to make execution upon a Venire facias, although he shall be punished as a Trespasser for breaking the House or Chest, yet he shall not be punished for taking the Goods, 18 E. 4. f. 4. but the execution which the Sheriff so made, is good. Br. Execution 100. 5 Co. 93.

Note, that in all cases where the door is open, the Sheriff and his Officers may enter into the House, and make execution, at the suit of any Subject, either of the Body or Goods: 5 Co. 92. But if the door be shut to, and only latched, (but not locked nor barred, &c.) the Officer may not draw the latch and so enter, per Curiam M. 36 Eliz.

And yet if the door be open, and the Sheriff or bailiff come to the house, and sheweth the King's proces, and offereth to enter to execute the same

process (being at the Suit of any Subject) and the Owner of the House, &c. shuts the Door, against the Sheriff, &c. here the Officer, giving notice of the cause of his coming, and requesting to have the doors open, may break open the House, if the party refuseth to open the Door, Vide 5 Co. 92, 93.

I have seen the Report of a Case adjudged in Mich. Term, Anno 17 Jac. Regis, in Banco Regis, Rotul. 1049. betwixt White Plaintiff and Wiltshire (an Under-Sheriff) Defendant, where in an Action of Trespass Quare causa fregit, domum intravit, ostium fregit, & seras fregit & abiecit, &c. The Defendant for the breaking of the House, &c. justified as followeth, viz. He pleaded that the Sheriff of that County had made him Under-Sheriff, and that a Fieri fac. was directed unto him, to make Execution of the Goods of the Plaintiff. And that he made his Warrant to five of his Bayliffs to make Execution, and that his Bayliffs found the door open and entered, and that the Plaintiff shut the doors upon them, and detained them in Prison in his House by the space of 24 hours; and that he to deliver the Bayliffs did break the door, and that he being so in peace in the House, for the execution of the said Writ, he broke open the inward doors; and thereupon the Plaintiff demurred, and three Objections were made to this Justification.

1. For that the Authority to the Bayliffs was made to five jointly, or severally, and that only two made the Execution.

2. For that, according to Semaynes Case, 5 Co. 92. upon a Fieri fac. in case of a Subject, the Officer cannot break the House of the Party to make execution, for his House is his Castle of safeguard: and admitting that he may break the first door, yet being entered he cannot break open the inward door.

3. Admitting that he may break the doors, yet it ought to be averred, that there were goods within the rooms whereof the doors were broken.

To the first Objection the Council of the Defendant answered, That it had been often adjudged (and named one Abington's Case in Banco,) that upon such an Execution and Warrant, the Bayliffs, five, four, three, two, or any one of them might execute the same, for that it is for the administration of Justice, and for the publick good that Execution be made; and all the Court were against the Plaintiff in this Point: And Sir John Doderidge said, That meer Strangers to the Warrant might aid the Bayliffs in this Case.

2. To the second point this diversity was taken, sc. when an Execution is once lawfully begun, there the Sheriff or his Officers may break the House to make Execution, &c. Otherwise when it is not lawfully begun; but here it was lawfully begun, for the outward door was open, and they lawfully entered into the House, so that after their Entry the Plaintiff cannot prevent the Execution, although that he might (peradventure) have prevented it, if that he had shut the door before the Entry of the Officers; and for this also the Case of Sir W. Fish was cited, wherein this former diversity was taken and agreed of for Law. The Case was this, the Sheriff had a Capias ad satisfac. delivered to him against Fish, whereupon F. was apprehended, and then the said F. made his escape from the Sheriff and got into his House, and the Sheriff presently broke open the door of his House, and took him again, and it was adjudged to be well and lawfully done, for that there was a lawful beginning of the Execution before, and that now he pursued the Execution lawfully begun, and all the Court agreed to this diversity. And Sir Henry Mountague Chief Justice said, True it is, that an House is a Castle for him that dwelleth there, for his repose and safety, and that

that it is privileged against the Execution of the Subject, when it is close and the doors shut, yet when in this Case the entry of the Minister of Justice was lawful, and the Owner of the House shall abuse this Privilege, and shall make resistance, and shall lay his hands, &c. upon the Minister of the Law, he hath thereby lost his Privilege, and hath made resistance to the Law, which now will not protect him in such a case; and this is the reason that every one which shall kill an Officer in the doing of his duty, shall be a Murderer. Dodridge, when a Man hath begun a lawful Execution, such as shall resist the same do resist the act of the Law; and the Possessions, Houses and Lands of every Man are chargeable by Law to such Jurisdiction of the King and his Ministers (as it is in *Manxel's Case*, *Plo. f. 13.*) Sir Robert Houghton, if one be arrested by the Sheriff, and he escapeth to his own House, and the Sheriff pursueth him, and breaketh open the Doors of his House, and taketh him again, and so continueth his first possession of his Prisoner, the party shall never take benefit of this his own wrongful Escape.

3. And as to the third Point. The Council of the Defendant answered, that for breaking of the inner doors, they needed not to aver that there were any goods there, for the Officer cannot know that before his entry, and by intendment a Man hath Goods in his own House; whereunto Dodridge and Houghton Justices did agree, and said farther, that if the Sheriff was in one room, he may break open another (to execute his Writ, &c.) upon refusal to let him go in.

And as to that which was said in this Case before, that the Sheriff cannot deliver his Writs upon his own Authority, but ought to have sued out a Writ de homine replegiando, Dodridge said, that were against all reason, that the Officer of the Law should be put to such an inconvenience for the Execution of his Office. And Judgment was given by the whole Court against the Plaintiff. And Justice Houghton moved that the Court ex Officio would grant out Process de bene gerendo, and an Attachment against the Plaintiff for thus abusing of the Officers of the Law.

The Sheriff and other of the King's Officers, which shall enter into any House or Land, or shall meddle therewith, to do things requisite for the Execution of the commandment or Writ of the King, or of his Courts, or for the examination of the Titles of the Parties complainants, or the Execution of the Rights tryed or adjudged are punishable: So that if A. be seised of Land in Fee, upon a good and undefeasible Title, and an Estranger shall demand this Land by a Præcipe, against another Stranger, and upon this the Sheriff or Officer by virtue of the Præcipe cometh upon the Land with Summoners, and summons him against whom the Præcipe is brought, and after the demandant recovereth against him by default, or by issue tried, and that by force or virtue of an habere facias seisinam the Sheriff cometh again and putteth him who hath recovered in possession thereof, and then departeth; here A. cannot punish the Sheriff or other Officer, for their first coming, nor for their second coming upon the Land, for that the Officer doth nothing but execute the King's commandment, in manner and form as he had in charge, *Plo. Manxels Case*, *f. 13, 14.* And if A. shall shut or keep shut the door of the House so recovered (by default) or by issue tried, yet the Sheriff by virtue of the habere facias seisinam, may break open the door, and deliver seisin thereof, to him which hath recovered, &c. *5 Co. 91. hic antea.*

Whether upon an Information out of the Chancery for to deliver or yield the possession of an House, directed to the Defendant, and commanding

manding the Sheriff upon an Attachment which is granted at the suit of the party (out of the Chancery) for not performing an Order of that Court, or for some other contempt) it seemeth the Officer cannot break open the house to take the party so of offending. *Crompt. Author. des Courts*, f. 33. Tamen quere, for that the words of the Attachment are thus, Ad respond. nobis tam de quodam contemptu nobis illat. &c. So as the King seemeth to be a party, &c. in regard of the contempt.

But upon a Commission of Rebellion out of the Chancery, the Sheriff, or his Officers (or the Commissioners, may break open the doors or house to apprehend the party being therein (whether he be within his own house, or in the house of any other, if they will not open the door, or deliver him, &c.) *Crompt. Author. des Courts*, fol. 47.

Also in Execution of the Commission of Bankrupts, the said Commissioners, or any Officer or Officers, or other person, by the said commissioners, or the greater part of them deputed and appointed by their warrant under their hands and seals, may break open the houses, chambers, shops, warehouses, doors, trunks, or chests of the said Bankrupt, wherein the said Bankrupt, or any of his goods or Estate shall be, or reputed to be, and to seize upon and order the body and goods, &c. 21 Jac. cap. 19.

But the Sheriff, &c. ought not to break open any mans house in the Night, to execute, any Proces, or to do any other ministerial act, &c. See hic cap. 22.

Also it seemeth that the Sheriff cannot break open a door, or a gate, &c. to distrain for the Kings rent; or to levy any fine or amercement, issues, debts, or other such like duties due to the King. Quere if it be by the Kings Writ or Proces out of the Exchequer, &c. See hic cap. 19.

The Sheriff may break open, or beat down a Castle, Fort or House, to make replevy and deliverance of Cattle there impounded, and withholden, &c. *Westm. 1. cap. 17. Hic cap. 114.*

The Sheriff may not break open a Close to make a Replevin, where there is a gate, Except that be locked up, &c. 20 H. 6. 30.

Upon a Fieri facias if the Officer shall break open a house, door, or chest, to take goods in Execution, an action lieth against him, *mes tantum pur le destruiser*. 28 E. 4. 4.

And note, that in all cases where the King is a party (as for Felony, &c.) or hath interest in the business, the Sheriff, and his Officers, if no door be open, and that they cannot otherwise enter, may break open the doors, or house of the party offending, or any other house where the party is, to arrest the offender, or to make other execution of the Kings Proces, &c. *Co. 5. 91, 92.*

As if a man be Indicted of trespass, and a Capias pro fine be awarded to the Sheriff to take the body of the same person, The Sheriff may break open the party or offenders house, or doors, or any other mans house wherein the offender shall be, to arrest the offender. And so upon Hue and Cry levied after one who hath stricken another, so as he is in any danger of death. 7 E. 3. fol. 16. *Co. 5. 91, 92.*

If a man be outlawed of Treason, or Felony, or in any personal action, whereby a Capias utlagatum shall be directed to the Sheriff to apprehend and take him, the Sheriff, &c. may break open the house to apprehend him.

See more hereof in my Country Justice, titulo Forcible Entry.

But note, that though the King be a party, yet the Sheriff and his Officers, &c. before they shall or may break open any house or doors, ought to signify the cause of their coming, and to make request that the doors may be opened, &c. *Co. 5. 91.*

Also note, that no man's house shall be any privilege to or for any stranger; Nor shall extend to protect any person that shall be there, or fly thither; Nor to protect the goods of any other that shall be brought or conveyed thither, to prevent any lawful execution, or to escape the ordinary process of Law. But the privilege of every man's house shall extend only to himself and his family, and to and for his proper goods, or to such as are there lawfully and without fraud or covin: And therefore if the Sheriff having process to be executed upon the body or goods of any stranger, do desire to have the door opened, or to have the body of the party lying, &c. thither, or the goods of another brought thither, to be delivered unto him, After such request made to open the door, or to have the body, or goods, of such person delivered him, if denial or refusal be made, or that it be not done, Then the Sheriff, or his Officers may break open the house, and may execute the Process, without any danger of law.

Also if the Sheriff do break open the house (in any the cases aforesaid) where any of the doors of the same house be open whereby he may enter, or where he may open the door by a key, or otherwise, without breaking the house or door, he is a trespasser, and subject to an Action.

## C A P. XCV.

*Where the Sheriff, &c. may take Posse Comitatus,*

*Posse Comitatus*

**T**he Sheriff, or his Under-Sheriff, or Bailiff, &c. may (nay ought if need be) to take the power of the County, (i.e. what numbers of persons they shall think good; to aid him, or them, to execute in every behalf the King's Process or Writ, (be it by a Writ of Execution, *Replevin*, *Capias* &c. or any other Writ) it being the King's Commandment; And such as shall not assist the Sheriff, &c. therein, being required shall pay a fine to the King. Bro. Parliament & fines 37. & Trespass 266.

The Statute of Westm. 2 cap. 39. is direct and full in this point, saying, Sheriffs make many times false answers, returning that they could not execute the King's precept for the resistance of some great man; wherefore let the Sheriff beware from henceforth, for such manner of answers rebound much to the dishonour of the King. And as soon as his Bailiffs do testify that they have found such resistance, forthwith all things set apart (taking with him the power of the Shire) he shall go in proper person to do execution, &c. See hic antea fol.

West. 2. 13 E.  
1. 39.

But it seemeth by this Statute that the Sheriff shall not take the power of the County, but only post queremoniam factam, and not before. And yet it is holden that the Sheriff may do it by the Common Law, for quando aliquid Mandatur, mandatur & omne per quod pervenitur ad illud. See 3 H. 7. fol. 1. & Co. 5. 115.

Also by the Statute of West. 1. cap. 17. If a distress be impounded in a castle or fortress, and detained, the Sheriff or Bailiff taking with him the power of the Shire, &c. may cause the said castle or fortress to be beaten down. See hic postea.

West. 1. 17.

And by the Book 19 E. 2. Fitz. Execution 147. upon a writ of *Seisin*, the Sheriff returned that he could not deliver *seisin* for resistance, and for that the Sheriff did not take the power of the County according to the Statute, he was amerced twenty marks.

So in a Replevin, if the Sheriff return that the cattel are in a fort, or a castle, so as he cannot make deliverance, he shall be amerced, *causa qua supra*.

Lamb. 309.

Note, where the Sheriff, or other Officer, is enabled to take the power of the County, they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Peomen, Husbandmen, Labourers, Tradesmen, Servants, and Apprentices, and of all other such persons, being above the age of 15 years, and that are able to travel: To which purpose also, see the Sheriffs Patent of Assistance (here before fol. ) whereby there is commandment given to all Archbishops, Bishops, Dukes, Earls, Barons, Knights, and all other the King's Subjects within the same County, to be aiding to the Sheriff in whatsoever belongeth to his Office.

And in such cases they are not appointed any number, but it is referred to the discretion of the Sheriff, &c. what number they will have to attend upon them, and how and in what manner they shall be armed, weaponed, or otherwise furnished.

3 H. 7. 1.

The Sheriffs bayliff to execute a Replevy, took with him three hundred men armed (*modo guerrino*) sc. with Brigandines Jackes, and Guns, and it was holden lawfull; for the Sheriffs officer hath power to take assistance, as well as the Sheriff himself. B. Riots 2. Vide Co. 5. 72.

11 H. 7. 17.

Also the Sheriff may take Posse Comitatus, in defence of the Realm, when any of the King's enemies shall invade the land, &c. See here fol.

The Sheriff also may take Posse Comitatus, (any number that he shall think meet) to pursue, apprehend, arrest and imprison Traytors, Murderers, Robbers, and other Felons, or such as do break, or go about to break, or to disturb the King's peace.

And it seemeth, that in all cases where the Sheriff may take Posse Comitatus, there also he may make Proclamation, commanding in the King's Name, all persons (*met*) to come and go with him, and to aid him, for the apprehending of Traytors or Felons, suppressing of Rioters, pacifying of an Affray, or the like, or in any other thing belonging to his Office, where he shall find any resistance.

The Sheriff, &c. upon any lawful Warrant, for the apprehending of any Popish Recusant, &c. may take Posse Comitatus, &c. See the Statute 3 Jac. cap. 4.

P. Recusants  
52.

A man demands the Peace in Chancery against a great Lord, and hath a Supplicavit directed to the Sheriff, &c. there, if need be, the Sheriff may take Posse Comitatus, to aid him to arrest such a Lord, &c.

The Sheriff also may take Posse Comitatus, to execute the Precept or Warrant of the Justices of Peace: as in case of forcible entry, to make restitution, &c.

But it seemeth in such cases where the power of the County is to be raised or taken, that the Bayliff must have warrant from the Sheriff to do it, and that he must be a known Bayliff or Officer, that must do it.

Note, that the Sheriff, or his Officers, may take the power of the County by force of the Common Law, and that the Statute of Marl. cap. 21. & Westm. 1. cap. 17. & Westm. 2. cap. 39. are but a confirmation of the Common Law, for the taking of the power of the County by them, and that as well for the safeguard of their persons, as to execute the King's Writ and Commandment by Writ. 3 H. 7. fol. 1.

And every man is bound to aid and assist the Sheriff, and to maintain

him in his office in the Execution of the King's Writ, for this is the Commandment of the King. 3 H. 7. 1. Br. Trespas 266.

Also the Sheriffs Bayliffs (or his servant, having the Sheriffs Warrant) hath the same authority that the Sheriff himself hath, and every man is bound to aid them in their business, and that both by the Common Law, and Common Reason.

And every man is sworn (saith Keble) to be aiding to the Sheriff in his business; and if they do it not at the request of the Sheriff they shall be fined. 3 H. 7. 1. Br. fine pur Contempts 37. & Trespas 266. See also the Stat. of 2 H. 5. cap. 8. which inflicteth both fine and imprisonment upon such as shall not aid the Sheriff, they being thereunto required.

If the Sheriff (or his Under-Sheriff, Bayliff, or servant having the Sheriffs Warrant) shall take Posses Comitatus with them, without any sufficient cause, yet such as therein shall be aiding to the Sheriff, or his said Officers or servant, may well justifie such their doing by the Commandment of the Sheriff or his said Officers, &c. 5 H. 7. 4. 5.

## C A P. XCVI.

### *Bailment of Prisoners by the Sheriff.*

*Bailment.*

*Mainprise.*

**B**ailment is properly the freeing or setting at liberty, of one arrested, or imprisoned, upon action, either Civil or Criminal, upon sureties taken for his appearance at a day and place certainly assigned, Bracton, and cometh of the French word Bailler, i. tradere, to deliver, up, because he is then delivered into the hands of them, that bind themselves for his forth coming. Master Manwood maketh a great difference, between bail and mainprise; for (saith he) he which is mainprised, is always said to be at large, and to go at his own liberty, out of ward, after he is let to mainprise, until the day of his appearance: But it is otherwise where a man is let to bail, until a certain day, for there he is always accounted by the Law to be in the ward or custody of his sureties, for the time they undertook for him; and they may, if they will, keep him in ward or prison, all that time: So that he that is bailed, shall not be said to be at large, or at his own liberty. See Master Lamberts Justice of Peace, tit. Bailment, agreeing with this difference.

But in our Law these two words Bailment and Mainprise, are notwithstanding indifferently used, to express that surety which the prisoner is to find in such case. Lamb. Ibidem.

*Detain persons  
bailable.*

And yet Bailment seemeth to imply the delivery, and Mainprise the receiving of the prisoner, &c. and so these two words to be Relativa.

If the Sheriff, Under-Sheriff, or Bayliff, &c. shall detain any prisoners who are bailable, after they have offered sufficient sureties, the Sheriff, &c. shall be therefore grievously amerced to the King. 3 E. 1. cap. 15. See 23 H. 6. cap. 10.

*Bail persons  
not bailable.*

If the Sheriff, Under-Sheriff, or other Officer, shall let to bail any persons which are not by them bailable, they are also punishable therefore by the Judges of Gaol-delivery. See the Statutes, 3 E. 1. c. 15. 27 E. 1. c. 3. 4 E. 3. c. 2. & 23 H. 6. c. 10. P. Main. 3-4. Fitz. 251. 1.

If the Sheriff shall let a man to Mainprise, in case where he is not Mainpernable, it is an Escape. 25 E. 3. Abr. d'Ass. 74. Fitz. Escape 4. & Coron. 246.

And

And if the prisoner were in for Felony, and the Sheriff shall deliver him upon Bail or Mainprise, this seemeth to be Felony in the Sheriff, for that as it is a voluntary act done by him, so it is without authority; For the Sheriff hath no authority, at this day, to bail any such prisoner, except it be upon or by virtue of the King's special Writ to him directed for that purpose. Fitz. fol. 250, 251. Regiller 269, 270.

23 H. 6. c. 10.  
Fitz. 25. i. b.

But Sheriffs, Under-Sheriffs, and other Officers ought to let to bail, *Queux persons bailable.* and out of prison, all manner of persons being in their keeping, or by any of them arrested by force of any Writ, Bill, or Warrant, in any action personal, or upon any Indictment of trespass, upon offer of reasonable surety (of sufficient persons) having sufficient within the County where such persons be so let to bail) to appear at the day and place, as the said Writs, Bills, or Warrants shall require (or where the same are returnable) except such persons as are hereunder mentioned, *sc.* the persons in the seven Cases following.

Fitz. 251. b.  
Dyer 119.  
10 Co. 100.

Except all such as are in their custody.

1. By Condemnation.

2. ad Satisfaciendum, or other Execution.

3. Utlagatum.

4. Excommunicatum.

upon Capias

5. For surety of the peace; and yet by the Common Law the Sheriff might have bailed such before.

6. By commandment of any Justice. See Stamf 73.

7. And Vagabonds, or vagrant and idle persons refusing to serve, and which remain in prison under the custody of the Sheriff. Fitz. 251. b.

23 H. 6. c. 16.  
Flo. 63.

The first branch of the Statute of 23 H. 6. is a precept and commandment to Sheriffs that they shall let to bail prisoners which are arrested in personal actions, &c. the which Sheriffs could not do before this Statute. Co. 10. 100.

The second branch of this Statute was to restrain the bailing of others contained in the exception; so that Sheriffs shall not bail any such persons as are in execution upon any Statute, or Recognizance, or upon any Judgment given in any of the King's Courts for any debt or damages at the suit of any person, for that such persons shall not be bailed, nor suffered to go out of prison by Writ, (*sc.* with a Keeper) until they have agreed with the parties of that whereof they were judged, or for which they are in execution (unless it be by Writ, or other Commandment of the King.) See the Statute of Acton Burnell, & de Mercator' made 13 E. 1. 1 R. 2. cap. 12. & Fitz. 121. a. 251. d. Flo. 36, 37.

*Mes si Home soit condemn in ascun Court, & son corps prise in Execution, icy son corps poet estre remove per brief de Corpus cum Caula, ou per Certiorari (hors del Chancery); mes il ne serra bail, sed serra remaund al prison; la de remain, quousque il ad satisfie le Plt. &c. Stat. 2 H. 5. cap. 2.*

Neither shall any Sheriff bail any person, taken by a Capias Utlagatum, Excom' Capiendo, for Surety of the peace, by commandment of any Justice, nor Vagrants. Ut supra Stat. 23 H. 6. cap. 10.

Neither shall Sheriffs bail any prisoner or person which is taken for any manner of treason or felony. See the Statute of Westm. 1. cap. 15. 27 E. 1. c. 3. 23 H. 6. cap. 10. & 1 R. 3. cap. 3. for that power is now taken away from the Sheriff, and transferred to the Justices of Peace, in cases of Felony.

See

See more in my Country Justice, tit. Bailment, what persons are bailable, and what not.

If the Sheriff, Under-Sheriff, or other Officer shall detain any prisoner who is bailable as aforesaid, after sufficient sureties by the prisoner offered, or shall let to bail any person which is not bailable as aforesaid, such Sheriff or Officer shall lose to the party indamaged or grieved treble damages, and besides shall forfeit forty pound to the King and Informer. 23 H. 6 cap. 10.

*Officer prender  
jurat.*

Note, that the Bailiff, or other Officer, which arrests one by virtue of any Warrant, &c. ought to take sureties of the party arrested (if he be bailable) and this by force of this Statute of 23 H. 6.

And therefore the prisoner is not bound to go to the Sheriff if he offereth sufficient sureties to the Bayliff.

The abuses of Sheriff in bailing of prisoners, before this Stat. of 23 H. 6. see in Plo. 67.

The third branch of the Statute contains the form of the Obligation whereby they shall be let to bail; and makes Obligations taken in other form than the Statute limits and appoints, to be void, 10 Co. 100.

*Forme del Obligation.*

Now for the form of such Obligations as the Sheriff, or his Officers shall take (for the appearance) of such as they shall let to bail, the words of the Statute are thus; No Sheriff, nor any of his Officers or Ministers, shall take, or cause to be taken, or made, any obligation for any cause aforesaid. Or by colour of their Office, but only to themselves, of any person, nor by any person which shall be in their ward (by course of the Law) but by the name of their Office, and upon condition written, that the said prisoner shall appear at the day contained in the said Writ, Fill, or Warrant, and in such places as the said Writs, Bills, or Warrants shall require. Dyer 119. Co. 100. 100.

23 H. 6. c. 10.  
\* Vide Dyer 324. a. for this word, his.  
† Nota ceux parols, & vide eux bien expound, Plo. 10. 68.  
\* Vide Plo. 69. a.  
Co. 10. 100.  
Plo. 68.  
Dyer 119.

If the Sheriff, Under-Sheriff, Bayliff or other person shall take any bond or obligation of any person being in their custody, in any other form, by colour of their Office, such obligation shall be void, and besides the Sheriff (or other Officer) taking such obligation contrary to this Statute, shall lose to the party damaged or grieved in this behalf his treble damages, and besides shall forfeit 40 l. to the King and Informer.

Now then seeing that Sheriffs, Under-Sheriffs, and other Officers, after they have arrested one that is bailable, they then are to bail him, and ought to take bond for the appearance of their prisoners, before they deliver them, it behoveth them to be heedful and careful that their bonds be made according to Law, wherein let them mark these Observations.

1. First, the bond must be made to the High Sheriff himself (or to his use) by the name of Sheriff, and not to the Under-Sheriff, nor to any other.

2. Next there must be nothing inserted or put into the condition of that bond, but only that the Defendant shall appear (in the Court, from whence the Writ issued, or in such place as the said Writ or Warrant shall require) at the day contained in the said Writ or Warrant (being the day of the return thereof) and there to do as the Writ requireth. Plo. 69.

And yet if the condition be to appear generally, or to appear and answer; or to appear in person, it is good enough, notwithstanding such addition. See postea.

3. And concerning the prisoner or party to be bailed, it is meet, and safest for the Sheriff, that he be bound with two sureties, having sufficient

ficient within the same County, but this not of necessity, but only for the safety of the Sheriff.

Crompt. 106. a.

A bond entered into by a prisoner, to any person save only to the Sheriff, for the enlarging of the prisoner, is not good, but merely void in Law, by this Statute of 23 H. 6. 1. Serra al Vic. tantum.

Co. 10. 100. b.  
Pl. 68.

And with this agrees the Book of 7 E. 4. 5. where one was in the custody of the Sheriff, by force of a Capias directed to him upon an Indictment of Trespass, and the party maketh an obligation to another (by the denomination of the Sheriff) upon such condition as the Statute prescribeth, (for the surety or security of the Sheriff) and there it is holden that the obligation is void, for that the Statute prescribes that the obligation shall be made to the Sheriff himself, and by the Name of his Office, and this is part of the essential form of the Statute, Dyer 119. 10 Co. 100.

Crompt. 206. a.  
7 E. 3. fol. 5.  
Dyer 120.

A Sheriff had one in execution for a great sum, and after the Sheriff took an obligation (of the party which was in execution, and of divers others) in his sons name to pay to him at a certain day, &c. and so let the prisoner go at large, this was holden to be an escape, and the bond clearly void; it was the Sheriff of Staffordshire his Case, Ann. 31 Eliz. as Master Crompton reporteth.

Ibid.

And so it is where a bond is given to the Sheriff by a stranger for the enlarging of a prisoner, the bond is void. Fait per estr.

Co. 10. 100.  
Pl. 69. a.

But note, that this Statute of 23 H. 6. extends only to such obligations which any person being in the custody (or ward) of the Sheriff, do make unto him, and therefore Anno 34 Eliz. in an action of debt brought by D. Sheriff of B. against Burman upon an obligation, the Defendant pleaded this Statute of 23 H. 6. and shewed that one K. recovered debt and damages against him, and pursued a writ of Fieri facias against him, directed to the Sheriff of B. and that he made the obligation to the Plaintiff (being Sheriff) for the execution, and that the obligation was void by the Act; upon which the Plaintiff demurred; and it was resolved and adjudged, 1. That the obligation was not within the said Statute, for that the Statute extends only to such obligations which any being in his custody do make unto him. 2. That the obligation was not void by the Common Law, whereupon the Plaintiff had judgment. Sur fieri fac.

Mes icy le  
party ne fuit  
en son custody  
car fuit sur  
Fieri fac.

Wherewith also agreeth the opinion in Dyer fol. 119. a. that this Stat. of 23 H. 6. doth make void only obligations made (to the Sheriff, &c.) by prisoners, and persons arrested

Co. 10. 99. b.

And so in Beaufage's Case (10 Jacobi Regis) the Sheriff upon a Fieri facias took bond of the Defendant to pay the money in Court at the return of the writ, and it was resolved that such obligation was good, and not void by the Statute of 23 H. 6.

Co. 10. 100. a.

The like judgment was given An. 28 & 29 Eliz. between Burwey and Kett, upon an obligation taken by the Sheriff, pro solutione pecunie debite Domine Regine, upon an extreat out of the Exchequer. Sur extreat.

*Si le Vic. levy biens sur Fieri fac. & apres vend eux al party, & prist obligation pur les deniers, cest obligation nest void per Stat. 23 H. 6. per Curiam in Communi Banco. Mich. 37 Eliz.*

*Issint si Vic. Attache biens, & prist obligation pur eux. Ibid.*

Ri. Bowes Vic. del Stafford port dett sur obligation vers Hiningham, Et il plede in barr le Stat. de 23 H. 6. Et dit que un Vernon fuit in prison al suit le Plt. &c. Et sic in Executione existens fait le obligation al Pl. pro deliberatione sua: le Plt. replia que Vernon fuit alarge, absque hoc quod fuit in Custodia sua tempore obligac. factae. Et un Jury esteant al Barr, Egerton, Sollicit, move le Court que l'issue fuit Jeofail, Car non obstant que home ne soit

soit in Execution al temps del obligation fait, uncore si le obligation fuit fait pur son delivrance, ceo est deins ceo Stat. Et si ne soit accordant al ceo serra avoid, Come J. S. esteant in Execution promise le Vic. pur faire a luy un obligac. sil voet luy discharger. Et le Vic. luy lesser d'aler alarge, & donque il fait l'obligacion, &c. ceo est deins le Stat. car est fait pur son delivrance, & fuit le cause de son delivrance. Et ceo case fuit agree per Wray, Gawdy, & Fenner Justic: Et sic n'est issue, si fuit in prison al temps del obligation fait, ou nemy.

Tankeild al contrary, le Stat. est That no Sberiff, &c. Hall take any obligation for any cause aforesaid, &c. of any person, nor by any person, which Hall be in their ward, &c. per queux parols constat que le obligation prist n'est deins le Stat. sinon que le person soit in gard, Et sic le esteant in prison est issuable; Wray, Gawdy, Fenner & Clinch, non obstant que obligation prise d'un que est alarge, soit deins le Stat. per special matter monstre, &c. uncore quant celuy que plede le Stat. suppose que un in Execution existens fait l'obligacion, ore le esteant in Execution al temps est necessary & traversable, Et issue prise sur ceo est bon: per que le Jury fuit prise, & troveront pur Ri. Bowes.

But if the Sberiff Hall take an obligation of any person being in his custody or ward, then the condition of such obligation must be in substance according to the form prescribed by the Statute, or otherwise it will be void.

37 H. 6. f. 1.

Sans condic.

And therefore in 37 H. 6. the Sberiff took a single obligation of one that was in his custody (who wasailable) and it was holden to be void, for that the obligation wanted the essential form prescribed by the Statute; for the condition therein prescribed (i.e. for the appearance of the prisoner) was wanting, which is part of the substance. Co. 10. 100. Pl. 76. Dyer 119.

De un que nemy estailable.

So in the same Book Moyle saith, that if the Sberiff had bailed one who is excepted in the said Statute, and notailable, and had taken a single obligation, that it was void, which the rest of the Justices also granted; for by the exception it appeareth that it was not the intent of the Statute, that he should be bailed, and so the obligation is taken in other form than the Statute meant.

37 H. 6. fol. 1  
Pl. 64, 67.

Et s'aver harmless.

And by the opinion of Sir Edw. Coke, that as well in the former case of 37 H. 7. as in the principal case of Dive and Manningham, Pl. 67. the obligation which was with condition to save the Sberiff harmless (when the Sberiff against the Law had bailed one which was notailable) is against the Law, and void by the Common Law; wherewith agreeth Wiseman's Case 15 El. Dyer 324.

Co. 1. 100. b.  
Pl. 69.

Addition.

Also if the Sberiff Hall add to the condition of the obligation, that he shall be saved harmless against the King, and the Plaintiff, &c. this shall make all the condition void. Pl. 62.

Co. 10. 100. b.

So if the Condition of the bond be, to save harmless, or to discharge the Obligé; or to discharge, or to pay the charges or fees of the prisoner; or to yield his body to prison at all times upon summons, &c. in these cases all is void. Dyer 118, 119.

So if the condition of the bond be, that the prisoner shall be always at the commandment of the Sberiff, as a true prisoner, &c. or shall be have himself as a true prisoner (aswell within the Gaol, as without) until he shall be lawfully discharged. Dyer 323. Pl. 62.

One being in the Marshalsey for debt, the prisoner and an estranger did enter bond to the under Marshal, with condition to save him harmless of all Escapes, Actions, and suits touching the prisoner, and thereupon he let the prisoner go at large, and the opinion of the Court was that the obligation was void; And also that the under Marshal was

within the Case of the Statute of 23 Hen. 6. cap. 10.

Et nota que coment tous les printed Statutes de 23 H. 6. sont, que nul Vicount, ne nul de ses Officers ou Ministers susdit, prender aucun obligation &c. uncore les parolz del Estat. escript sont, que nul Vic. ne nul del Officers ou Ministers, & nemy ses Officers. Dyer 324.

Ibid.

So if the Sheriff or Gaoler shall take an obligation of the prisoner, with condition to pay for his meat, or his drink, these are void. Plowd. 68. See hic Gaoler.

10 Co. 100. b.

So if the Sheriff shall add any other thing to the matter prescribed by the Statute, as to pay to much money for a horse, &c. such addition maketh all the obligation to be void, for that it is taken in other form (touching the substance of the matter) than is prescribed by the Statute; and with all this agreeth Master Plowd. fol. 67, 68, 69.

10 Co. 100. b.

And if a Sheriff or Gaoler (for the ease and enlargement of any person who is in their custody, or ward) shall take a promise to save him harmless, although the Statute speaketh only of obligations with conditions, yet this is in the like mischief; and therefore promises shall be taken within the Statute of 23 H. 6. and within the equity of the words (any obligation) an assumpsit shall be taken; for Quando verba Statuti sunt specialia, ratio autem generalis, generaliter Statutum est intelligendum. Vid. hic postea Dabridgecourt's Case.

A verbal promise.

Dabridgecourt brought an action upon the Case against Smalebrooke, and counted that whereas the Plt. was Sheriff of the County of Warwick and a Capias ad Satisfac. came to him to take one Lane at the suit of the Def. the Def. desired the said Sheriff to make one Russell (who was the Def. friend) his especial Bailiff for the taking of Lane, and in consideration thereof, the Def. did assume and promise that if the said Lane did escape, that he would not take any advantage thereof against the Plt. whereupon the Sheriff made the said Russell his special Bailiff, &c. and after the said Lane did escape, and for this the Def. charged the Plt. against his own promise and Assumpsit; whereupon he brought his action: The Def. pleaded Non Assumpsit, and it was found for the Plt. And in arrest of Judgment it was alledged that this Assumpsit is within the Stat. of 23 H. 6. in the same manner as an obligation is; and so void; Also that the Assumpsit was against Law, for the ground of it was to let Lane at large, which the Sheriff could not do. And in this Case Cooke agreed that an obligation, and Assumption also, is void by the Stat. of 23 H. 6. where the party is arrested; but here this Assumpsit is before the party was arrested, and the Assumpsit was not made by the party himself. Wray Chief Justice said, that an Assumpsit was within the Stat. of 23. H. 6. as well as an Obligation, but here this Assumpsit was not within the Stat. nor contrary to Law, For if the Sheriff shall make a Bailiff at the request of the party, reason will that the same party shall not charge the Sheriff for an escape suffered by the said Bailiff. Gawdy Justice was of the same mind, for that it was a benefit to the party. Clinch and Fenner also agreed thereto. And Fenner (who was made Justice the same term) said, that the Sheriff did take of every known Bailiff an obligation to save him harmless, wherefore it is great reason when he makes a special Bailiff at the request of the party himself, that the party shall not take advantage of this escape. And Judgment was given accordingly for the Plt. in Banco Regis Term' Hillar. 32 Eliz. Rot. 371.

Also Fenner (in the former case) said, that if such an Assumption had been made to the Sheriff, to have one Bailiff who is a Bailiff General to the Sheriff, it had been void, for it had been no benefit to the party; but otherwise to have a special Bailiff (as in

A a a

this

this former case) for this doth advantage the party to have a more speedy Arrest made.

Also in the former Case it was said to have been adjudged, that where an Obligation is void by the Stat. of 23 H. 6. that in every such case, an Assumption or Promise shall also be void: And Wray said further, that if the Stat. makes an Obligation void, a fortiore it makes an Assumptive void, which shall be contrary to the provisions of the said Stat. But the Assumptive in the first case, he and all the other Justices held to be good.

By Montague Chief Justice, if more be inserted into the Obligation Plowd. 68. than for appearance of the party bound, all the Bond is void.

And yet 21 Eliz. Dyer 364. there the condition was in the copulative, to appear and answer, and the Obligation holden good. 10 Co. 101. b.  
Dyer 364.

The case there was this, a Sheriff having an attachment returnable coram Domina Regina & concilio suo, in camera stellata apud Westmonasterium in quindena Pasche, ad respond' dictæ Regine & concilio suo de quodam contemptu, & ad faciend' & recipiend' ulterius, &c. doth arrest the party, and takes bond of him (for his appearance) indorsed with this condition, sc. that if he shall personally appear before the Queens Majesty and her Council at Westminster, in quinden' Pasche, and then and there shall answer a contempt by him against the Queen and her Council committed, that then, &c. And the question was, Whether this bond and condition were good in Law or no, because the words (and then and there shall answer, &c.) were added to the condition, and so was more than the Statute of 23 H. 6. would warrant; And by the opinion of Dyer and Windham the obligation was good enough, for it was as much as to have said, then and there to answer (to a contempt, &c.) which had been good: And by this obligation no profit did accrue or grow to the Sheriff, nor to any other person, but was only to answer the Queen, &c. which was the intent of the Statute of 23 H. 6. yet Meade was of the contrary opinion: But afterwards Judgment was given for the Plaintiff, and so the Obligation holden and adjudged to be good, according to the Statute of 23 H. 6.

Also in the Kings Bench anno 27 Eliz. the case was this, Sir William Drury late Sheriff of the County of Suff. brought an Action of Debt upon an obligation of twenty pound, against A. B. who demanded Oyer of the obligation (whereby it appeared that the Defendant was only bound therein) and of the condition, which was that one More, whom the said Sheriff had arrested by force of a Latitat out of the King's Bench, should appear in person at the day contained in the Writ, ad respond' &c. and pleaded the Stat. of 23 H. 6. and that the said obligation was taken in other form than the said Statute prescribed, &c. whereupon the Plaintiff demurred in Law: And it was objected that there were three variances from the form prescribed by the Statute, sc. one in the obligation, and two in the condition: In the obligation, for that the Plaintiff took but one surety, whereas the Statute prescribes reasonable surety of sufficient persons, in the plural number, having sufficient within the County, &c. in which case there ought to be two sureties at the least; and here was but one surety, and so against the words of the said Statute; and also against the intent of the Statute, for the more, and the better able that the sureties are, they will the sooner raise the party that is bailed to appear, and thereby Justice shall proceed with more expedition: And also in the condition, first the words are that the prisoner shall appear in person, whereas the words of the Statute are to appear generally, without these words in person; secondly, that he should appear at the day, &c. ad respond', where those words

(ad

(ad respondend') are more than the Statute prescribes, and so for these two cases the condition varied from the form prescribed by the Statute, and therefore the obligation was void: But it was resolved by Sir Christopher Wray Sir Thomas Gawdy, and all the Court of the King's Bench, that the said obligation was not void; for as to the first Objection, the words upon reasonable surety of sufficient persons, are added for the surety of the Sheriff, and therefore if he will take but one surety, it is at his peril, for he shall be amerced if the Defendant appeareth not; and therefore the Statute doth not make void the obligation in such case, for the branch of the Statute which prescribeth the form of the obligation, requireth that the obligation shall be made to the Sheriff himself by the name of his Office, and that the prisoners appear, in which clause no mention is made of the sureties, so that the meaning of the Statute was, that in as much as this was at the peril of the Sheriff, to leave this to his discretion, *sc.* to take one or more sureties for his indemnity; and peradventure it shall be better for him sometimes to take one which is sufficient, than two others; And although the sureties or surety have not sufficient within the same County, as the Statute mentioneth, yet the obligation is good enough, for these words of the Statute to this point, are rather for counsel and direction of the Sheriff, than by way of precept or constraint to him, and that for the safety of the Sheriff: But note, that if the Defendant cannot find two sufficient sureties, having sufficient within the same County, the Sheriff is not bound to let him to bail.

*But one Surety.*

*Nient suffi-  
deins County.*

10 Co. 100. a.

Ibid.

Fitz. 25. c.

And as concerning the two additions to the condition of the said obligation, more than is in the Statute, it was resolved, that there is a verbal difference in the form prescribed by the Statute, but no difference in substance and effect, for he that is bailed ought to appear in person; And so, and for the same cause, the other exception was not material, for he which was to appear, ought to appear ad respondend' & parum differunt, quæ re concordant.

In an action of Debt brought by Bassett (a Sheriff, in Communi Banco Anno 29 Eliz. Rotul. 1511.) against Ballard, upon an obligation made upon condition that Ballard should personally appear (before the Justices of the Common Pleas) at such a day, there to answer to such a suit as J. S. had against him; it was moved that this Bond taken by the Sheriff was against the form of the Stat. of 23 H. 6. for that there was more inserted into the Condition, than the Stat. limits, or the Common Law enforced, for it had this word Personally, whereas, the Def. may well appear by Attorney, in the action, &c. and therefore the bond should be void by this Stat. And it was adjourned, and after Gawdy shewed a Judgment in the King's Bench, upon the very point, upon a bond taken by Thomas Sackford (a Sheriff) of one Shutt (A. 29 Eliz. Rotul. 1512.) And Sackford brought an action of Debt against Shutt hereupon; and it was adjudged for the Plt. after much argument. *Quære si nul diversity soit perenter apparance sur Latitat, & sur auter brief: Car sur Latitat ne poet appeare per Attorney, si non le pl. voet ceo admit; mes semble nul diversity, Car le Stat. ne parle sic, personally.*

And so note that Sheriffs (nor their Officers) ought to take no obligation for any cause or thing aforesaid (or by colour of their Office) of any person being in their custody or ward, but only to the High Sheriffs themselves, and by the name of their Office, naming himself Sheriff in the obligation, and upon condition only that the party shall appear at the day and place in the writ or Warrant specified; and if any obligation be taken by colour of their Office in any other form;

it is void by the Statute of 23 H.6. But for the sureties, their number, their sufficiency, and the sum wherein they shall be bound, all these rest in the discretion of the Sheriff, and his Officers, but yet at the peril of the Sheriff, if the Defendant shall not appear thereupon.

Regule.

*Comment obligation prise in autre manner que le Statute (de 23 H.6.) prescrive soit void, uncore le party ne poit plede non est factum, mes avoider' ceo per plee, &c. 7 E. 4. fol. 5. 3 Co. 59. & 5.119.*

*Ceo Statute de 23 H.6. cap. 10. est forsque perticuler & special act, d'ont les Judges, ou Court, nest tenuz, de prender notice, ex officio, sinon que soit plead per le party. Dyer 119. 4 Co. 76.*

*In dett sur obligation prise per Vic. pur apparance tiel jour, Le Def. dit que il appear, &c. le Plt. replye que ne appear, &c. Ceo serra trie per le Record, & nemy per pays; Car nest apparance sinon soit per matter de Record. M. 29 Eliz. in Banco Regis.*

*Tiel bonds doivent estre sue per Vic. per nosme del Vic. ou autrement le brief abater. M. 29 Eliz.*

*Si Vic. prist obligation pur apparance, & le obligor ne appeare, uncore si le Vic. ne soit amerce pur ceo que l'obligor ne appeare le Vic. ne poit suer cest obligation. Per Cur. Mich. 38 & 39 Eliz.*

*Nota, que le Vicount & ces officers, ne poient prender obligation de Plowd. 68. 2. leur prisoner, forsque in petit number de Cases, car leur ability in ceo point est limit per ceo Statute de 23 H.6.*

*Et issint semble de obligation, prise per le Vicount de ses officers, ou de ascun autre persons, colore officii, si issint soit que le obligation est prise in autre forme que le Statute limit. tamen quare.*

A prisoner that is sent to the Gaol for Felony, or suspicion thereof, may in divers cases be bailed by the Sheriff; But that must be upon the Kings writ specially directed to the Sheriff, for that purpose. Vide Fitz. 250 & 251. a.

A man indicted of trespass (or for any other like offence) before Justices of Peace, and thereupon committed to prison, may also upon the King's Writ be bailed by the Sheriff, to appear at the Sessions, &c. Fitz. 150. g. h.

If a man be sued or indicted, &c. whereupon a Capias, or an Exigent shall be awarded against him, and the party thereupon is arrested, or imprisoned, &c. yet upon a Superedeas directed to the Sheriff, he is to bail the party, &c. Fitz. 236, 237.

If a man be bound in a Stat. Merchant payable at a certain day, and at the day he payeth part of the sum, and gets a Release (from the Conussee) for the residue, and yet after the Conussee sueth Execution, and taketh the body of the Conusor, &c. here upon a Writ directed to the Sheriff (rehearsing the matter, &c.) the Sheriff may safely bail him. Fitz. 251. d.

And so in divers other cases, upon the King's Writ directed to the Sheriff to bail or deliver a prisoner, &c. the Sheriff ought to do as he is commanded by the Writ.

## C A P. XCVII.

## Obligations

*The form of a Bond for appearance.*

**N**Overint universi per præsentēs nos A. B. de C. in Com' Cantabr' gen' E. F. de L. in Com' Præd' Yeoman, & H. T. de R. in Com' prædict. Yeoman, teneri & firmiter obligari A. B. milit' Vic' Com. præd. in quadraginta libris bonæ & legalis monetæ Angliæ, solvend' eidem vicecomiti aut suo certo attornato, execut', sive administrator' suis Ad quam quidem solutionem bene & fideliter faciend', obligamus nos & quemlibet nostrum per se pro toto & in solido; hæred', executor', & administrator' nostros, & cujuslibet nostrum, firmiter per præsentēs: sigillis nostris sigillat', dat' quarto die Decembris, anno Regni Domini nostri Jacobi Dei gratia Regis Angl', &c. decimo nono, & Scotiæ quinquagesimo quinto annoque Domini 1621.

*The Condition for appearance.*

**T**he condition of this present Obligation is such, That if the above bounden A. B. do appear coram Domino Rege (if the Writ be out of the King Bench) apud Westmonast. die Jovis proxim' post quindenā Sancti Hillar' (or otherwise according to the return of the Writ) but if the Writ be returnable in the Court of Common Pleas, then the words in the condition must be for the Defendant to appear coram Justic' Domini Regis (apud Westmonast. in oct. Sancti Hillar', (or such other return according to the Writ) to answer to C. D. in a Plea of Trespass (or Debt, as it is in the Writ) that then this present Obligation to be void, and of none effect, or else the same to stand, remain, and continue in force, strength, and vertue.

Sealed and delivered to the use of the above-named Sheriff, in the presence of A. R. and T. S. (two witnesses at the least.)

*Or thus in Latin.*

**C**onditio istius Obligationis talis est, Quod si supra obligatus J. H. Compareat personaliter coram Domino Rege: Or coram Justic' Domini Regis, apud Westm' (a die Paschæ in 15 dies) ad respondendum A. B. de placito debiti vel detene', aut compoti, juxta tenorem brevis Domini Regis præfat' Vic. inde direct'. Quod tunc hæc præsens Obligatio vacua & pro nulla habeatur, Alioquin in suo robore permanere & effectu.

Upon a Warrant made or granted out upon a Capias utlagatum, the Sheriffs in some places do use to take of their Bailiffs a Bond, with Condition, to bring the Defendant to prison if he be arrested; which makes good execution of those Process. And it were to be wished, that this were used in all Countries, and then there would not be so much Exortion and indirect dealing used by Under-Sheriffs and Bailiffs to the King

King and his Subjects as there is: For if they take any man upon a Capias utlagatum, they will not only take money of the Plaintiff, for to take the Defendant, but when they have taken him, for money they will let him go again; and they will alledge for a colour, that it is to reverse the Outlawry, which they have nothing to do withal; for the Defendant ought to be brought to prison, and there to remain until he hath reversed the Outlawry by the help of some Attorney, and not by the Sheriffs, Under-sheriffs, or other Officers; For no Under-sheriff, or Sheriffs Bailiff, &c. ought for their times to practice as an Attorney. Wilk. See hic postea titulo Sheriffs Officers.

*Upon Replevin.  
De prosecuter  
le suite.*

Also upon all Replevins granted or made by the Sheriff, or his Officers, they must take a Bond of him to whom the Replevin is granted, for his appearance, and prosecuting of the suit, &c. Whereof see postea titulo County Court. Westm. 2. c. 2.

*De Return' les  
biens, &c.*

Also there is another Bond which the Sheriff or his Officers must take for the delivery of the goods or cattel replevied, if return shall be adjudged, &c. The form of which condition may be as followeth: Ibid.

Conditio istius Obligationis est talis, quod si supra Obligati B. B. & C. D. redeliberaverint supra nominato vicecomiti, omnia illa bona & catalla; & quamlibet inde parcellam per P. H. capt' & ratione cujuspiam Repleg. per prædictum vicecomitem factum, præfatis A. B. & D. D. Repleg', si returna inde adjudicetur; Et præd Vic' & executor' suos indempnem conservaverint, Quod tunc hæc præfens Obligatio vacua & pro nulla habeatur, Alioquin hæc præfens Obligatio in omni suo robor' permanere & effectu.

Or thus in English, as well for the prosecuting of the suit,  
as for the Return of the goods.

*Alter.*

**T**he condition, &c. That whereas the within-named Sheriff by virtue of his Office, and upon the complaint of the within-bounden J. S. hath delivered and Replevied to the same J. two Horses and five Kine, which one W. T. late took and wrongfully withholdeth, as the said J. S. saith: If the said J. do pursue his action with effect against the said W. for the taking and withholding of the said Horses and Kine, and do make return of the same, if the return thereof shall be so adjudged by Law; And the said Sheriff, his heirs, executors and administrators shall acquit, discharge, and save harmless against our Sovereign Lord the King, and the said W. of and for all and every thing concerning the premises, That then, &c. Westm. 211.

A Condition to appear before the King and his Council,  
in the Star-Chamber.

**T**he condition, &c. That if the within bounden J. S. do personally appear before the King and his most Honourable Council in the Court of Star-Chamber at Westminster (upon such a day) and so from day to day, and not to depart without Licence of the said Court, That then, &c.

*A Condition to appear in the Common Pleas, upon an Exigent.*

**C**onditio, &c. Quod si A. B. de, &c. in propria persona sua compareat coram Justic. Domini Regis apud Westm. a die Sancti Michaelis in tres septimanas prox' futur' post datum infra script. Ad respondend' R. W. in placito debiti, secundum vim formam & effectum cujusdam brevis de Exigend' infranom' Vic. direct. Quod tunc, &c.

*A Condition to appear at the Sessions of the Peace.*

**C**onditio, &c. Quod si infra Obligatus J. S. in propria persona sua compareat (quare de ceo clause, & reddit se tanquam prisonar' Vic. infranom') ad proxim' Session' Justic. Pacis in Com' Cantabr. proxime post festum, &c. proxim' futur' tenend' Ad respond' Domino Regi de diversis offensis unde indictatus est. Quod tunc, &c.

Alias.

**C**onditio, &c. Quod si quædam A. W. Spinster. in propria persona sua compareat coram Justic. Domini Regis de Pace in Com. C. conservand' assignat. ad proximam Sessionem pacis dicti Domini Regis apud C. (en le Shirehouse ibidem) proxim' tenend' Ad respond' tam dicto Domino Regi, quam G.S. de placito transgressi. & contempt. contra formam Statuti servient. \* Et ulterius indemnes conservet infranominat. Vic. hæredes & executores suos versus dictum Dominum Regem, & omnes alios quoscumque de & super præmissis, quod tunc, &c. West. 260. *Mes quare de cel darein clause eu addition, ad not \**

*A Condition to be a true Prisoner.*

**T**he Condition, &c. That if J. H. Merchant of, &c. which now is in the Kings prison under the keeping of the Sheriff within named, as well by reason of a Writ of our Sovereign Lord the King of the Statute of the Staple containing the sum of one hundred pounds, &c. As also for certain other actions, causes, and suits on the behalf of R. S. &c. moved and commenced, be from henceforth a true and faithful prisoner, carrying and remaining with the said Sheriff, and his Deputy, till the same R. S. be fully at an end discharged and acquitted of the said action, and then content and pay to the said Sheriff, &c. all and singular costs, charges, fees and other duties in such cases therefore accustomed to be paid, That then, &c. West. 210.

*A Condition for appearance in the King's Bench, for the Peace.*

West. 270.

**C**onditio, &c. quod si infra Obligatus J. L. compareat personaliter, in custod' infranominat' Vicecom', &c. coram Domino Rege (in octabis Sancti Michaelis proxim' futur') ubicunque tunc fuerit in Anglia, ad inveniend' tunc coram ipso Domino Rege sufficientem securitatem pacis Domini Regis, & de se bene gerendo erga ipsum Dominum Regem & cunctum populum suum, & præcipue erga H. C. juxta tenorem brevis ipsius Domini Regis præfat' Vicecom' inde direct'; Et interim pacem gerat, & dict. Vicecom' hæred' & executor' suos erga Dominum Regem & cunctum populum suum, præcipue erga prædict. H. C. de & in omnibus concernent' præmissa indemnes conservet quod tunc, &c.

*A Con-*

*A Condition for appearance in the King's Bench, and good abearing.*

**C**onditio istius Obligationis talis est, quod si interius Obligatus J. L. West. 201. compareat personaliter sub custodia infranominati Vicecom' vel ejus deputat' coram Domino Rege in Octabis Sanct' Hillar' proxim' futur' ubicunque tunc fuerit in Anglia, ad inveniendum tunc coram ipso Domino Rege sufficientem securitatem de se bene gerendo erga ipsum Dominum Regem & cunctum populum suum, juxta tenorem brevis dicti Domini Regis præfat' Vicecom' inde direct', & se bene medio tempore gerat, & dict' Vicecom' & executor' suos erga Dominum Regem & cunctum populum suum, de & in omnibus concernent' præmissa indempnem conservet, quod tunc, &c.

*De suis Officiis.*

Also it is safe for the Sheriff to take good security of his officers, sc. from his Under-Sheriff, Bailiffs and Gaoler, &c. And this security is commonly by Bonds or Covenants, the forms whereof, See hic postea titulo, Sheriffs Officers.

But these bonds are thought by some opinions to be void, or voidable by the Words of the Statute of 23 H. 6. cap. 10 That no Sheriff shall take any Obligation for any cause aforesaid, or by colour of his office, but only in such form and sort as is prescribed by the same Statute, And if any Sheriff take any obligation in other form, by colour of their office, it shall be void: And therefore if the High-Sheriff shall take good Covenants by Indenture, from his Under-Sheriff, Bailiffs and Gaoler, &c. with three or four good sureties, (all of them to Covenant jointly and severally to and with the High-Sheriff for the performance of such Covenants as shall be meet to be had and made between the said High-Sheriff, and his said Officers, respectively) it may seem (without bonds) to be safer, than to trust wholly upon bonds which may be questioned, &c. And yet a bond of some good sum with sureties, from the Under-Sheriff and other Officers, with condition for the performance of the Covenant compiled in such Indentures, will make them the more careful, &c.

And by others this Stat. of 23 H. 6. doth make void only such obligations as are made (to the Sheriff, &c.) by Prisoners, or persons arrested. See hic cap. 69. And that bonds taken by the Sheriff, or his Under-Sheriff, Bailiffs, and other Officers, with condition to save the High-Sheriff harmless, are good.

*Sur Idempt. Nominis.*

Also by the Statute made 37 E. 3. cap. 2. where the Sheriff shall seize any lands or goods, &c. of one man, which beareth the same name with another that is outlawed, the party grieved may have a Writ de Idemptitate Nominis, directed to the Sheriff (or other Officer:) but the party grieved must withall find surety before the Sheriff (or other Officer) to answer the King the value, &c. in case he cannot discharge himself.

## C A P. XCVIII.

The Sheriff is to be Attendant upon the Judges in their Circuit.

**N**Ote that the Counties of this Realm are divided into six Circuits. And two learned men are assigned by the Kings Commission to every Circuit to ride twice a year through those Shires allotted to that Circuit.

And the Judges of Assise allotted to every Circuit do use to make Proclamation aforehand a convenient time in every County of their coming into the County, and the time, and place of their sitting.

And at that time, all the Causes of the Country are brought before them by the parties grieved: And all the Prisoners in the Gaols of those Shires; And all Controversies arising concerning life, liberty, lands, or goods.

And these Judges of Circuits have now five Commissions, by which they sit.

1. A Commission of Oyer and Terminer directed to them and to many other of the best accompt in the Circuit: But here the Judges are of the Quorum. And this is the largest Commission, giving them power to deal with Treasons, Murders, and all manner of felonies and misdemeanors.
  2. A Commission of Gaol-delivery: This is to the Judges only; And hereby they are to deal with every Prisoner in the Gaols, for all Offences whatsoever.
  3. A Commission to take Assises.
  4. A Commission to take Nisi prius.
  5. A Commission of the Peace, in every County in their Circuit: where all the Justices of the Peace are to attend the Judges.
- } These two Commissions are directed only to the Judges, for the speedy trial of Discords; and also to try Issues joyned at Westminster for ease of the Country.

1. Upon a Precept from the Judges of Assise, the Sheriff is to summon the Assises, and to return the same, &c. which see hic antea fol.

2. Also the High Sheriffs themselves of every Shire are in person to attend upon the Justices or Judges of the Assises and Gaol-delivery in (and through) their Circuits, v. 27. and shall give their attendance for the due executing of the Commandments and Precepes of the said Judges in matters concerning the execution of their offices and ministration of Justice; and to take the charge of all prisoners committed to the prison, and for the execution of felons and other persons condemned to die, which Sentence he is to see Executed; And for the insuring of punishment upon other prisoners according to Justice and the Judgment given upon them, and so far forth as appertaineth unto their office of a Sheriff.

Also all Stewards, Bailiffs, and other Ministers of any Liberties, or Franchises, &c. shall be attendant to the Justices, of Assise, and Justices of Gaol-delivery, of the same Shires, wherein such Liberties and Franchises be. And shall make due execution of all Process to them to be directed for the ministration of Justice, within such Liberties and Franchises, 27 H. 8. cap. 24. vide hic cap. 121.

And the Judges of Assise may fine the High-Sheriff, and other the said Officers, if they fail either in their attendance, or for any other

negligence, misbehaviour, or misdemeanour, in their Office, befoze them.

Pea, by some opinions, the Sheriff in every Shire through the Circuit, is to attend in person, or by a sufficient Deputy allowed by the Judges, all the time that they be within the County, and the Judges may fine him if he fail, &c. Bacon, v. 26. Tamen aliter in usu.

The Sheriff also is safely, to carry, convey and conduct unto every such place and places as shall be lawfully assigned, all prisoners committed to his charge, or custody, or to his Gaoler, for any manner of misdemeanour, criminal cause, or other offence whatsoever, there to receive their trial, judgments, and punishments for the same.

The command of the Judge (without writ, or warrant) is a sufficient warrant to do execution upon a prisoner condemned. Fi. 17. 3 H. 7. c. 3.

3. Every Sheriff (and all other persons) which have the custody of the Gaols (or of prisoners for felony,) ought to certify the names of every of their prisoners which are in their custody for felony, to the Justices of the next general Gaol-delivery, in a Kalendar, upon pain in 5 l. for every default.

The form of such Kalendar may amongst other things be as hereunder followeth, or else they may make a Kalendar of the prisoners alone.

*Kalendarium.*

*Cantabr.*

**K**alendarium de nominibus Justic' Pacis Domini Regis, Coronator' Senescall' Ballivor' libertat' & hundred', in com. prædict. Summon' ad essend' ad Assisas tenend' apud C. in Com. præd. die Lunæ in secunda septimana Quadragesimæ, Anno Regni Domini nostri J<sup>a</sup>. Dei Grac', &c. Fidei Defensoris, &c. Ac de \* nominibus prison' in Gaola prædict. \* See *hic Tit. Gaol.*

Nomina Justic' Pacis.

A. B. miles & Baronettus. C. D. miles. E. F. Ar. &c.

Nomina Coronatorum.

G. H. I. K. &c.

Nomina Senesch. & Ballivor' Libert'.

L. M. N. O. P. Q. &c.

Or here you may shew specially, who is Steward, or Bailiff, of every Liberty or Franchise, as followeth:

A. B. Senesch. de Libertate de E.

C. D. Ballivus de Libertate de F.

Et sic de cæteris.

Nomina ballivor' Hundred'.

R. S. T. V. A. C. B. D. &c.

Or thus:

R. S. Ballivus Hundred' de R.

T. V. Ballivus Hundred' de C.

Et sic de aliis Ballivis aliorum Hundred'.

J. S. repris.

J. N. capt' apud S. pro suspect' feloniz.

Et sic de reliquis, &c.

Also they must shew by what Justice of Peace the Prisoner was committed, and for what cause.

And they must here shew, what prisoners have been bailed (by the Justices of Peace) after they were committed; And by what Justices they were bailed.

Nota,

*Nota, que Justices de Gaole deliv'ry, (coment que leur Commission finie ove leur Sessions in mesme le pais,) uncore apres que sont ales, ils poent commander le Vic. de faire execution, d'ascun que est reprie, ou de stayer ascun que ad judgment. Dyer 205.*

*Mes si le Vic. stay de faire execution sur ascun prisoner que ad judgment sans commandment des Justices de Goale deliv'ry, il serra fine.*

The Kings Writ under the hand of the Justice of Gaol-deliv'ry, if it shall be sent to the Sheriff commanding him to take persons appealed (before the same Justice) by Provoers who are in prison, the Sheriff in whose liberty the party so appealed shall be commorant or may be found, by vertue of such writ shall take such persons appealed, and shall cause them to be brought unto the Gaols where the Appelloers be kept that appealed them, &c. Stat. 28 E. 1. for persons appealed.

*Ibid.* Also by writ from the same Justices to the Sheriff in whose liberty the felonies were done, of which such persons are appealed, the Sheriff shall cause an Enquest of the Country to come before the same Justices, unto the same places where the Appelloers be kept.

*Ibid.* And the Sheriff in whose keeping such Appelloers are detained, shall receive those that be appealed by such Provoers, when the parties appealed be taken, and brought unto the same Appelloers.

The Justices assigned to hear and determine felonies (of the County where a man is indicted of felony) may award their process or writ to the Sheriff of any other County, where the prisoner who is indicted is dwelling or abiding, to apprehend them, and the Sheriff of such other County is to execute the same according to the writ. Stat. 5 E. 3. c. 11. & 8 H. 6. c. 10.

### C A P. XCIX.

The Sheriff also is to assist the Justices of Peace in his County in divers Cases.

**T**he Sheriff is to provide and make ready a fit, meet, and decent place, for the Justices of Peace, to keep and hold their general Quarter Sessions, as need shall require. *Riots.*

In some cases the Sheriff is to joyn with the Justices of Peace, as in case of Riots. See hic antea.

If the Sheriff, or Under-Sheriff, shall not go and joyn with the Justices of Peace for the due execution of the Stat. of 13 H. 4. c. 7. made for the suppressing of Riots, Routs, and unlawful assemblies, &c. for the arresting, and imprisoning of such offenders, and recording their offence, and inquiry thereof, according to the same Statute, they shall forfeit one hundred pound.

And the Sheriff is to convey such offenders to the Gaol, at the appointment of the Justices of Peace.

13 H. 4. c. 7.  
15 R. 2. c. 2.

If the truth of the Riot cannot be found out upon the Inquiry, then within one month after the Inquiry, the Sheriff, or Under-Sheriff shall joyn with the Justice of Peace in a Certificate of the fact and circumstances, &c. upon pain of one hundred pound. See hic antea fol.

Also if the said Riot be not found by reason of any embracery, or maintenance, &c. That the Sheriff, or Under-Sheriff (over and besides their former Certificate) shall joyn in another Certificate, of the names of such maintainers, and embracers, with their misdemeanors, upon pain of twenty pound. See antea hic fol.

In some cases the Sheriff is to attend the Justices of Peace.

If the Sheriff (or any other person of the County) do not attend upon the Justice or Justices of Peace, to go and assist him or them, to arrest such as shall make any forcible entries) into any Houses, Lands, or other possessions) or any forcible detainer thereof, he or they so offending, shall be imprisoned, and pay a fine to the King. 15 R. 2. <sup>13 H. 4. c. 7.</sup> P. force 5. cap. 2.

If two Justices of Peace (the one being of the Quorum) shall make their Precept to the Sheriff to summon the Sessions at a certain day and place, and shall command him thereby to return a Pannel or Jury from such a Venue (or place near where their Sessions shall be holden) before them, The Sheriff ought to perform this precept and commandment of the said Justices, notwithstanding any Superedeas or other command or precept to the Sheriff awarded by any other Justices of Peace Fitz Just. of. P. 10. Crompt. 122.

But if the King by his Writ of Superedeas, shall command the Sheriff (or the Justices) that they shall not hold such their Sessions at that day and place appointed, this doth discharge the first precept of the Justices. Ibidem.

And yet if the Custos Rotulorum, (or two Justices of Peace, &c.) shall make their precept to the Sheriff to summon the Sessions at a certain place and day, Two other Justices (one being of the Quorum) may make another precept to the same Sheriff to summon and keep another Sessions upon the same day, at another place within the same County, as Mr. Crompt. saith, fol. 123. 124.

**T**he Sheriff, (by himself or by his Under Sheriff) ought also to attend the Justices of Peace at their general Sessions of the Peace, and that for the double duty that he beareth, The one as Sheriff, to return the precept, and to take the charge of prisoners, and to serve the Court otherwise, as he hath in charge by the Mandamus that is mentioned in the Commission of the Peace; The other, because the Sheriff hath also care and charge of the Peace, (Lambert 381.) and so is there to object against such persons as shall be committed by him.

The Sheriff is to summon 24 discreet men of the County to be at the Sessions to serve of the Great Inquest, &c.

He is also to warn all Coroners, Constables, Bayliffs of Hundreds, and Liberties, &c. and some of every Hundred for Jurors, to appear at the Sessions, &c. according to the form of the Precept directed to him for that purpose, which see hic cap. 47.

And if the Sheriff shall make default of Attendance at the Sessions of the Peace, the Justices of Peace may amerce or fine him for such his default.

In other cases the Sheriff is to execute the Process, Precepts, Warrants, and other lawful commandments of the Justices of Peace. And therefore upon a Precept from any two Justices of the Peace (the one being of the Quorum) the Sheriff is to summon the Sessions of the Peace, and to return the same. See hic. fol.

All Bayliffs and other Ministers of Liberties ought also to attend the Justices of Peace at their Sessions, and must execute their Process, &c. 27 H. 8. cap. 25. See hic postea cap. 121.

If any Sheriff (or Bayliff of Franchise having return of the King's Writ) shall slack and not make due execution of the Precepts of the Justices of Peace, to them directed for the returning of Juries to enquire of forcible Entries, &c. or Riots, &c. they shall forfeit to the King

20 l. for every default, &c. See Stat. 8 H. 6. cap. 9. & 19 H. 7. cap. 13. hic cap. 87.

All Sheriffs, and Bailiffs of Liberties, must truly execute all such Process as shall come to him or them from the Justices of Peace, before whom any presentment shall be made touching decayed Bridges, or annoyance of Bridges, upon pain to make such fine, as shall be assessed upon him or them by the said Justices. 22 H. 8. c. 5.  
P. Bridges 8.

If the Justices of Peace shall grant out any Process against any servants, or labourers, departing into other Shires, the Sheriff must duly execute such Process upon pain of twenty pound. Stat. 2 Hen. 5. c. 4.

Also the Justices of the Peace (as well out of their Sessions, as from their Sessions of the Peace) may in many cases direct their Precepts, or Warrants, and other Process to the Sheriff, Under-Sheriff, Bailiff, or other like Officer for administration of Justice, And the Sheriff and other his Officers are to execute the same, accordingly. See my Country Justice, pag. 303, 305 & 367.

By the Stat. 12 R. 2. cap. 10. it is ordained that every Justice of Peace shall take for his wages or costs 4 s. for every day of the Sessions, and 2 s. for his Clerk; which wages shall be levied of the Fines and amerciaments of the same Sessions, by the hands of the Sheriff: And that the Lords of Franchises shall contribute to these wages of the Justices, according to the quantity of their parts of the Fines and amerciaments.

After by the Stat. of 14 R. 2. cap. 11. it was provided, that the Citreats of the Sessions of the Peace shall be doubled (or Indented) by the Clerk of the Peace, and that the one part thereof shall remain with the Sheriff, and the other part thereof to be delivered to the Barons of the Exchequer, And the names of the said Justices of Peace, and the number of their days of sitting at their Sessions shall be written in the same Indenture, to the intent that the Sheriff, may know to what Justices he ought to pay the wages of the Sessions, and to whom not.

And by the same Stat. it is further ordained, that neither Duke, Earl, Baron, or Baronet, shall have or receive any wages, for the time of their Sessions, or for the said Office.

Note, that if a man do forfeit a Recognisance for the Peace, (to the King) because he kept not his day of Appearance at the Sessions; Or if the Recog. be forfeited for any breach of the Peace; these forfeitures are not liable to the payment of the said Justices wages.

Also the Issues returned upon Jurozs, are not liable to the payment of the said wages: But if the Jurozs who should have been upon the great Enquest do make default of appearance, for the which they be amerced, of these amerciaments the said Justices wages may be levied, although there were no Inquisition made at the same Sessions.

The said wages of the said Justices of Peace, ought also to be levied of the Fines and Amerciamentes of the same Sessions, and not of any other Sessions holden either before or after.

And yet if a man be indicted at one Sessions, and at the next Sessions, or at any other Sessions after, he maketh his Fine, this Fine shall be liable to these wages of those Justices before whom the said Judgment was taken.

The Justices of Peace may have their action of Debt against the Sheriff for their said wages being unpaid.

And the Lords of Franchises shall be contributory to the said Justices wages, &c. where the Lord of the Franchise hath the Fines and Amer-

Amerciaments of his tenants, or of the inhabitants of such Towns, &c. there such Fines and Amerciaments shall be rated proportionably; and the Sheriff may detain and keep in his Hands, so much thereof, when the Lord of the Franchise demands the same in the Exchequer: But if the Lord shall levy the same by his Officers (as he may by the Kings grant) then the Justices of Peace are to be payed by the Lord himself, &c. Crompt. 177.

The Justices of Peace, by their Commission have power to enquire de quibuscunque Vicecomitibus, Ballivis, Custodibus Gaolarum, & aliis Officiariis, qui in Executione Officiorum suorum (concerning matters belonging to the Justices of Peace to Enquire of) indebite se habuerunt, aut remissi, vel negligentes fuerint: And to hear and determine the same, according to the Laws and Statutes of this Realm.

## C A P. C.

The Sheriff is to execute the Precepts of Commissioners of Sewers.

**T**he Commissioners of Sewers have authority to make and direct Writs, Precepts, Warrants, and other Commandments, to all Sheriff, Bayliffs, and all other Ministers and Officers, as well within Liberties as without, before the said Commissioners or six of them, at certain daies, times, and places to be returned, &c. 23 H. 8. c. 5.

Sheriffs shall return and cause to come before the said Commissioners (at such days and places as they shall appoint) such and so many Jurozs, sc. honest and lawful men of their Bailiwick or Shire, (as well within liberties as without) as shall be expedient for inquiry. Ibid.

Also other Ministers and Officers, as well within Liberties as without, shall be attendant unto the Commissioners of Sewers in and about the due execution of their Commission. Ibid.

If any Sheriff, or other Officer, shall be negligent in the due execution of the premises, the said Commissioners, may (as it seemeth) punish them by distress, fines and amercements, or otherwise, as to the said Commissioners (or six of them) shall seem expedient, &c. Ibid.

And by the Statute made 7 Jacobi Regis, All Sheriffs, (Bailiffs, Officers, and other the Kings Ministers whatsoever) within the Counties of Norfolk and Suffolk (as well within liberties as without) shall from time to time be attendance, aiding and assisting to the Commissioners of the Sewers, and to every six or more of them; for and concerning the returning of the Juries before the said Commissioners; as also for and concerning all such other things as shall concern their several offices and places respectively, in or about the execution of all things in the said Act contained; upon pain to forfeit such pains, penalties, fines, and sums of money as shall be set or imposed upon them, by any six or more of the said Commissioners, &c. which said penalties, &c. shall and may be levied, by distress, sale of goods and imprisonment, &c. and shall be employed and disposed of, in and about the preservation of the Fen-grounds, and draining of the waters there. 7 Jac. c. 20.

The Sheriff also to execute the Precepts of other Commissioners.

**S**heriffs, or their sufficient Deputies, shall at their own proper costs and charges give their diligent attendance upon all Warrants and Precepts directed to them from Commissioners, and other such Officers or persons as shall have authority to write to the Sheriff for any manner of service, whatsoever by the Laws of this Realm ought to be done by the Sheriff: And shall make such return thereof, as the Law, or need shall require.

As the Commissioners upon the Statute of Bankrupts (made 13 El. cap. 7.) may cause the lands, tenements, annuities, offices, and goods, &c. of Bankrupts, to be viewed, rented, and appraised unto the best value they may, and then to make sale thereof, &c. And for the appraising of such lands, &c. the said Commissioners (ex officio as it seemeth) may make and direct their Precept or Warrant to the Sheriff, for the returning of a Jury before them, for appraising and valuing thereof: And such Commissioners (may as it seemeth) set a fine upon the Sheriff for not returning such a Jury before them, tamen hoc quære.

See Fitz. 119. f. A Writ of Attendance directed to the Sheriff, by Commissioners assigned to take an account, &c. and to make return of a Jury before them the said Commissioners.

Also Fitz. 257. d. A writ awarded to the Sheriff, to return a Jury before Commissioners (assigned to enquire of the age of the Kings Ward) at a certain day and place to be appointed by the said Commissioners, by their Precept and Warrant made to the same Sheriff.

Sheriffs ought to obey and execute all Precepts and reasonable Requests made to them by Commissioners for the Subsidy, for the Execution of the said Commission, so far as to the Office of the Sheriff belongeth to do. See the Statutes of grants of Subsidies.

If any under-Collector for the Subsidy cannot levy the sums committed within his Limits, &c. the Commissioners for the Subsidy may direct their Precept to the Sheriff (or other Officer) to distress such person indebted, his executors, administrators, termors and assignees, &c. And for want of distress to arrest and attach the body of such person indebted, and to keep him in prison without bail until he hath paid the said sum, &c. And the Sheriff to whom such Precept shall be directed by the said Commissioners, ought to execute the same. Ibidem

The Sheriff in some things is to execute the Precepts of Escheators.

**N**ote that Escheators by the Common Law may make and direct their Precepts or Warrants to the Sheriff, for the returning of Juries before them; and may also assess and set a fine upon the Sheriff, for not returning of a pannel or Jury before them, &c. 7 H. 6. 12. Br. Fines per Contemptis 18 And this Escheators might have done by the Common Law.

And yet for that Escheators for their private gain used to take Enquiries

quests (to enquire before them, as well by virtue of the Kings Writs, as by force of their Offices) favourably and not duly, by people not impannelled nor returned to them by the Sheriffs of the Counties, to the grievance of the Kings Subjects, &c. Therefore by a Statute made 8 H. 6. c. 16, it was Ordained, That no Escheator or Commissioner shall take any Enquest, but of such persons or people as he returned and impannelled by the Sheriff, in the County within which he is Escheator or Commissioner.

By the Statute 34 H. 8. every of the Sheriffs within the Counties of Wales, shall have power within their Sheriffficks, as Sheriffs in England, and shall accomplish and execute all the lawful commandments and precepts of the Justices, &c. and of Escheators in all things appertaining to their offices, and authorities.

34 H. 8. c. 26.

The Sheriff in some Cases is to execute the Precepts of Coroners, &c.

**N**Ote also that Coroners by the Common Law may make and direct their Precepts and Warrants to the Sheriff, for returning of Juries before them; And may also Assess and set a fine upon the Sheriff for not returning of a Pannel or Jury before them, &c. 7 H. 9. 12. Br. Fines pur Contempts 18.

By the Statute made Anno 34 H. 8. it was Ordained, That every of the Sheriffs within the Counties of Wales, shall have full power within their Sheriffficks, to do as Sheriffs in England; and shall accomplish and execute all the lawful commandments and precepts of the Justices, &c. and of Coroners, in all things appertaining to their offices and authorities.

34 H. 8. c. 26.

By the Statute made An. 3 E. 2. Sheriffs shall have Counter-Rolls with the Coroners as well of Appeals, as of Enquests, of Attachments, Absurations, Writings, and of other things which to that office belong, 3 E. 1. c. 10. P. Coroners. 3. & 16. Stamf. 64. & Fitz. 186.

And to this purpose Master Bracton lib. 2. de exceptionibus ad Appella, saith thus, Est aliquando dissentio in recordo faciend. inter Coronatores & Vic' cum uterque debeat habere suum Rotul', in quibus quandoque varia continen', quandoque concordant. Et habent Record' quandoque Coronat' per se sine Vic', ut si Vic' mortuus fuerit, vel amotus, & rotuli non invenient'. Si vero Rotulus Vic. discord' a Rotulis Coronat', & Rotuli Coron' conveniunt, tunc eorum stabit recordo, quia Rotulus Vicec' nihil operat' nisi ad testim'. Et quid si rotulus unius Coron' discord' a rotulis aliorum, cum plur' fuer' standum est plural'. Si autem non sunt nisi duo Coron', & discord', tunc stabit rotulis ipsius cum quo concordat rotulus Vic'. Si autem sunt ibi quat' Coronat' & duo dissent' a duob', nec appareat Vic' qui Rotul' habet ad testific', tunc stabitur illis duob' qui cum Appell' conven', &c. Stamf. 83.

Again Master Bracton libro 3. tit. de Corona, saith thus, Cum quis alium appellaverit de pace, & plagis, videre debet Coronator plagas illas, & illas mensurare cujus sunt longitudinis, & cujus profunditatis, live facte fuerint in Capite, sive alibi & quibus armis; Et hæc omnia faciet Irotulari cum testimonio Vicecom' si præsens fuerit in Inquisitione facienda, vel saltem in Com. si Appellum factum sit in Comitatu.

Also upon a fugam fecit presented before the Coroner, the goods being seized by the Sheriff, ought to be seized by an Enquest, and the apprehisement to be Inrolled by the Sheriff and Coroners, &c. *Stamf. de Prærog.* 47. d.

Mag. Chart.  
cap. 17.

But no Sheriff, Coroner, or any other Bayliff of the Kings shall hold pleas of the Crown: sc. they shall not hold pleas of any felony, nor of any lands (or other Real things but by a writ of Justices,) nor of any trespass vi & armis, &c. And yet the Sheriff, or Coroner may enquire of the death of a man, and of other things belonging to their Offices. See hic antea fol. & hic postea cap. 107.

The Clerk of the Market also (who is an ancient Officer to see that all weights and measures be according to the King's Standard in the Exchequer,) may hold a Court, and make his Proses or Precepts to Sheriffs (and Bayliffs of Towns) to return Juries before him, at a certain day and place by him to be appointed, by which Juries he may enquire of things incident to his Office. *Crompt. Author des Courts,* fol. 22.

### C A P. C I.

The Sheriff in some Cases is to Assist the Ordinary.

**T**he Sheriff by his oath, is bound to do all his power and diligence to destroy and make to cease all Heresies called Lollaries or Lollards within his Shire or County.

Also the Sheriff (being required) is to aid and assist the Ordinary, and Comissary, for the suppressing of Heresies within his County.

Note, that this part of the oath which the Sheriff taketh, for the suppressing of Heresies, seemeth to be by force of the Statute 2 H. 5. c. 7. which Statute is since repealed by the Statute, 1 E. 6. 12. & 1 Eliz. 1.

Now concerning that Stat. of 2 H. 5. cap. 7. made against a sect of Hereticks (so then termed) called Lollards; the Stat. it self is not only repealed as aforesaid; But the persons then called Lollards by the Papists were indeed the true Professors of the Word of God, as appeareth in Mr. Fox his Book of Martyrs, pag. 540. So that the Oath of the Sheriff in that behalf were fit to be amended.

For the Papists taking advantage thereof write as followeth; That Lollards was the vulgar name of Wickliffs Followers, and therefore the Sheriff's Oath to persecute Lollards, King Edward the Sixth, Queen Elizabeth, and King James would not have suffered, nor the Protestant Sheriffs would take such an Oath, if they accounted Wickliffs, Protestants, thus say they. *Pr.* 440.

Passer Birckbeck in his Book called The Protestants Evidence, part 2. pag. 85, 86. saith, that the Lollards were a company of true and godly professors: And that they were so called from one Raynard Lollard, who was burned in Germany for Religion and opposing the Pope.

How far the Sheriff was in former times, to aid the Ordinary for the suppressing of Heresies, and punishing Hereticks. See *Fitz.* 269. d. & *Br. titulo Heresies.*

But now the Statutes made against Lollards or Hereticks (as they were termed) sc. the Stat. 5 R. 2. c. 5. 2 H. 4. c. 13. 2 H. 5. c. 7. &

25 H. 8. c. 14. &c. And all repealed by the Stat. made 1 E. 6. c. 12. And therefore at this day, a man be soze he shall be adjudged an Heretic, must be convicted of Heresie, by the Archbishop, and all the Clergy of that Province, sc. by a Provincial Synod, and must abjure thereof, and after Abjuration must fall into a relapse of that or some other Heresie, and be newly convicted, and condemned by the Clergy of that Province, in their general Council of Convocation; and yet after such conviction and condemnation, the Ordinary ought not to deliver him to the Lay-power, or Sheriff, to be burned, without the King's Writ purchased and had therefore: whereas before (by the Statute 2 H. 4. c. 15.) every Bishop within his Diocese, might have convicted, abjured, and condemned a man of Heresie; And upon the Bishop's Warrant, the Sheriff ought to have burned him, and that without the King's Writ.

Fitz. 269. d.  
Br. Heresie.

And quere what the Sheriff at this day may do, for the destroying, or suppressing of Heresie, more than to execute the King's Writ, for burning of such as shall be convicted and condemned, as aforesaid.

But now this Writ de Hæretico Comburendo is taken away by the Statute made in 30 Car. 2. Regis.

## C A P. CII.

The Sheriff is to Proclaim certain Statutes, &c.

*Statute of  
Winch.*

Every Sheriff in England ought in person four times every year, to proclaim the Statute of Winchester (made 13 E. 1. against Homicides, burning of Houses, Robberies, and other Felonies) within every Hundred of his Bailiwick; and in all Fairs and Markets by his Bailiffs (as well within Liberties as without:) And this is parcel of his oath, and is by force of the Statute made anno 7 R. 2. c. 6. and the purport and intent thereof was, that the offenders should not be excused by ignorance; but these Proclamations are not made at this day. Vide Dr. & St. 146, 147.

13 E. 1. c. 1.  
28 E. 1. c. 17.

*Statute of  
Purveyors.*

Also every Sheriff ought to proclaim all the Statutes and Ordinances made of Purveyors (not repealed) four times in his year, through his Bailiwick, upon pain of 5 l. But it seemeth the Sheriff is first to receive the said Statutes, together with the King's Commandment for doing the same, and then he ought to proclaim them accordingly; and he ought then also to deliver the same to his successor by Indenture, for him to proclaim the same upon the like pain.

1 H. 6. c. 2.  
20 H. 6. c. 8.

*Unlawful games*

Sheriffs shall make Proclamation four times in the year, sc. every quarter once, in every Market to be holden within their Counties, of the Statute provided against unlawful Games, and for maintenance of Archery: but it seemeth that none of these three former Statutes as for the Proclamations are now in use.

33 H. 8. c. 9.

*Rates for wages*

The Sheriff upon receipt of any Proclamation printed, and sent down by the Lord Chancellor, &c. or upon receipt of any rates of wages made by the Justices of Peace of that County, and ingrossed in Parchment under their hands and seals for the rates of wages of servants and labourers, &c. shall forthwith cause Proclamation to be made of the several rates so made, in every Market Town within his limits (or at least in so many places within their authorities as shall be convenient;) The same Proclamation to be done in open Market, and to be fixed upon some post, in some convenient place of the Town.

5 Eliz. cap. 4.  
39 Eliz. c. 12.  
1 Ja. c. 6. & 29.

*Hawks.*

If any findeth a Hawk that is lost, he must presently bring the same

34 E. 3. c. 22.  
to 37 E. 3. c. 19.

to the Sheriff of that County (where it is taken up,) and the Sheriff must make Proclamation, in all the good Towns in the County, that he hath such a Hawk in his custody; and if the Lord or owner which lost the same Hawk, or any of his servants come to challenge it, and prowerth reasonably that the same is his Lords or Masters, he is to pay for the costs, and to have the Hawk again; and if none come within four months to challenge the Hawk, then the Sheriff shall have the Hawk, making gree to or with him that did take up the Hawk, if he be a simple man; and if he be a Gentleman, and of estate to have the Hawk, then the Sheriff is to redeliver him the Hawk, taking of him reasonable costs for the time that he had him in his custody, i.e. reasonable allowance for the keeping thereof.

Proclamation to be made by the Sheriff.

31 El. cap. 3.

**F**or avoiding of secret summons in real Actions, after summons up-  
 on the land, and fourteen days at least before the day of return  
 thereof the Sheriff shall make a proclamation of the summons upon a  
 Sunday, immediately after Divine Service and Sermon, if any Sermon  
 there be, and if no Sermon there be, then forthwith after Divine Ser-  
 vice, at or near to the most usual door of the Church or Chappel of that  
 Town or Parish where the Land whereupon the summons was made  
 doth lie. And that Proclamation so made, as aforesaid, shall be returned  
 together with the names of the summoners; And if such summons  
 shall not be proclaimed, and returned, according to the tenor and mean-  
 ing of this Act, then no Grand Cape to be awarded, but an alias and plu-  
 ries summons, as the case shall require, until a summons and procla-  
 mation shall be duly made, and returned, according to the tenor and  
 meaning of this Act, 13 Eliz. 3.

*Summons in  
Real actions.*

*Returned.*

6 H. 8. cap. 4.

Also for the avoiding of secret Outlawries, & upon every Exigent  
 where Writs of Proclamation are to be awarded, the Sheriff of the  
 County to whom any such Writ of Proclamation shall be directed, be-  
 fore any utlary pronounced, shall make three Proclamations within his  
 County, at three several days (two of his Proclamations to be made  
 in full Court of his County or Shire Court; And the third Proclama-  
 tion to be made at the general Sessions in those parts where the party  
 defendant is supposed to be dwelling, &c.) that the party yield his body  
 to the Sheriff of the County to whom such Exigent is awarded, so that  
 the Sheriff may have the body at the day of the return of the Exigent to  
 answer the plaintiff: But now by the Statute of 13 Eliz. one Procla-  
 mation is to be made in the open County Court, another at the gene-  
 ral Quarter Sessions of the Peace, and the third at or near the most  
 usual Church door of that Town or Parish where the defendant shall be  
 dwelling at the time of the Exigent awarded, and upon a Sunday imme-  
 diately after Divine Service (and Sermon, if any be) and the same  
 (third proclamation) to be made one month at the least before the  
 quint' exact, by virtue of the said Writ of Exigent; and that all Ucla-  
 ries had and pronounced, and no Writ of Proclamation awarded, or not  
 returned according to this Statute, shall be utterly void.

*Upon utlary.*

31 El. c. 3.  
Exig' 13.

1. 1. In County.  
2. At Sessions.  
3. At officium  
Ecclesie.

1 E. 6. 6. 10.  
5 E. 6. c. 26.  
P. Exig' 6.

Also whensoever any Writ of Exigent shall be awarded (in any action or suit in the King's Bench, or Common pleas) against any person dwelling in Wales, Lancashire, or Cheshire, one Writ of Proclamation shall be also awarded, &c. and every Sheriff (of every of the said Counties) to whom any such Writ of Proclamation shall be di-  
 rected,

*Wales, &c.*

rected, shall make proclamation of the said Writ of proclamation, according to the tenor of the same, and shall make true return of the same, according as the same Writ shall require.

Also by an other Statute made anno 31 El. Writs upon proclamations, and Exigents, against any person dwelling within the County Palatine of Durham, shall be directed to the Bishop (or Chancellor) of Durham, &c. And the said Bishop, &c. shall by his Mandate directed to the Sheriff of the said County Palatine, cause proclamation to be made of the same writs of proclamation, according to the tenor of the same; and shall make true returns of the same, into such Courts as the tenor of the same writs of proclamation shall require.

31 El. c. 9.

All Writs pronounced against any person upon any such Exigent awarded against any person dwelling within any of the said Counties of Wales, Lancashire, and Cheshire, as also within the said Bishoprick or County Palatine of Durham, and also writs of proclamation awarded in form aforesaid, or not returned as aforesaid, shall be clearly void, and of none effect. P. Exigent. 6. & 15.

Also if the Sheriff shall not duly execute and make true return of such writs of proclamation, &c. he shall be amerced at the discretion of the Justices. 6 H. 8. c. 4. P. Exigent. 5.

And the Sheriffs of every the said Counties of Wales, Lancashire, and Cheshire, as also the Bishop or Chancellor of Durham, &c. which shall not make true return of every such writ of proclamation to them directed &c. they shall lose for every such default 5 l. the one half to the King, the other half to any person which will sue for the same. 1 E. 6. c. 10. 5 E. 6. c. 26. 31 El. c. 9. P. Exig. 8. & 17.

*Averment.*

If the Sheriff shall not make all these proclamations in case of Writ of Outlawry, according to the Statutes, &c. yet by the Common Law the party being outlawed should not have averred this against the Sheriffs return, (i.e. to say that there was but one, or two proclamations made by the Sheriff, &c. or to say, that the Sheriff made no proclamation at the Church-door, or Sessions, &c.) but in such cases the party so unduly outlawed, should have had his Action of the Case against the Sheriff, and so recovered his damages, &c. See the opinion of Keble 10 Hen. 7. fol. 23 &c. Br. Action sur le Case 122.

10 H. 7. f. 2.

*Upon writ.*

For now by the words of the Statute of 6 H. 8. cap. 4. All Writs had contrary to the same Statute shall be avoided by averment without suing of any writ of Error.

6 H. 8. c. 4.

And by the Statute 31 Eliz. cap. 3. in fine before any allowance of any writ of Error, or reversing of any Writ shall be had by plea or otherwise, though, or by want of any proclamation to be had or made, according to the form of this Statute, the Defendant and Defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit, in a new action to be commenced by the said plaintiff for the cause mentioned in the first action, but also to satisfy the condemnation, if the plaintiff shall begin his suit before the end of two terms, next after the allowing the writ of Error, or otherwise avoiding of the said Writ,

31 El. c. 3.

Upon an Appeal, or Indictment, against any person dwelling in a foreign County, before any Exigent awarded, immediately after the first Capias returned, another writ of Capias shall be directed to the Sheriff of the County, whereof by the said Indictment the party is supposed to be; upon which second Capias, if the Sheriff cannot find the party within his County, Then the Sheriff shall make proclamation in two Counties (before the return of the same writ) that the party so Appealed or Indicted shall appear before the Justices, &c. where he was so Indicted

dicted or Appealed, at the day contained in the said last writ, to answer the matter, &c. 8 H. 6. cap. 10. And if the party appear not thereupon, and that be returned by the Sheriff, then the Exigent shall be awarded; and every Exigent awarded, or Writ pronounced upon any such Indictment, &c. against this form, shall be void. Ibid.

Upon a writ de Excom<sup>o</sup> Capiendo, if the Sheriff returneth Non est inventus, then shall there be awarded a Capias with a proclamation therein contained, upon the receipt whereof, the Sheriff shall in the full County Court (or else at the general Assises and Goal-delivery, or at a quarter Sessions for the peace to be holden within the same County) make open proclamation, ten days at the least before the Return, that the party or parties named in the said writ, shall within six days next after such proclamation yield his or their bodies to the Goal of the said Sheriff, there to remain according to the tenor of the first writ de Excom<sup>o</sup> Capiendo. And if the Sheriff shall thereupon return that the parties have not yielded their bodies accordingly, thereupon still such process shall go out, and the Sheriff shall make the like proclamation, until the party yield himself. 5 Eliz. cap. 23.

If any Riot, Rout, or unlawful assembly of people shall be, and that the same, or the truth thereof, cannot be found by the Justices of peace upon their Enquiry, Then within one month the said Justices and Sheriff (or Under-Sheriff) shall certify into the King's Bench, &c. the whole fact, &c. (ut hic cap. 4.) And if the offenders do not appear in the King's Bench upon the first process, Then another writ shall be directed to the Sheriff to take the Offenders, and to bring them into the said Court, &c. And if they cannot be found, Then the Sheriff shall make proclamation in his full County Court next ensuing the delivery of the said second process, that the said Offenders be before the King and his Council in the King's Bench, or in the Chancery in the Vacation, within three weeks then next following, And if the offenders come not then in, and that the proclamation be made and Returned, the Offender shall be convicted and attainted of the Riot &c. 13 H. 4. cap. 7.

7 H. 4. c. 15. Sheriffs (at the next County holden after the delivery of the King's writ) shall make proclamation in their County Court, of the day and place of the Parliament, &c. so that all interested may attend to the election of the Knights of the Parliament, &c. See hic antea fol. Of the Parliament.

23 H. 6. c. 11. Sheriffs when they have received the King's writ for the leuying of expences of the Knights of the Parliament, at the next County Court, they ought to make proclamation, that all parties interested be at their next County, to assess the said wages, &c. See hic antea tit. Knights of the Parliament.

In the writ of Admeasurement of Dower, as also in the writ of Admeasurement of Pasture, when the suit is come to the grand distress, day shall be given, within the which there may be holden two Counties, at the which open proclamation shall be made, that the Defendant shall appear at the day contained in the writ, to answer the Plaintiff, at which day, if he do appear, the suit shall proceed betwixt them, and if he do not appear, and the proclamation be in form aforesaid testified by the Sheriff, Admeasurement shall be made by default. Westm. 2. 13 Ed. 1. 7. Fitz. 125. h. 126. c. Admeasurement of Dower.

*In brief de Admeasurement de Dower, ou Pasture, le Proces ore (per le Stat. de Westm. 2. cap. 7.) est Summons, Attachment, & un grand Distress, en quel deux Proclamations serra faits sc. la serra jour done devant que le brief soit retorne, que deux Countyes poent estre tenus, sc. perenter le*

le date del brief & le Retorne de ceo, Et in chescun County un Proclamation serra fait, que le Def. vener & monstre pur que Admeasurment ne serra fait, &c. Vide hic cap. 49. & 113.

In brief de Mesne, le plt. poet aver Summons, Attachment, & le grand Distress, que avera jour de retorne per tiel temps, que deux Countys poet estre tenus, Et in chescun County le Vic. sera un Proclamation, que le Def. (sc. le mesne) viender de responder al plt. (sc. de acquite le tenant, &c.) Et sil ne vient, & le brief soit retorne, &c. donque il serra forejuge, sc. le tenant sera tous temps enapres tenant al Signeur paramount, come le mesne fuit, & mesme les Service. Fitz. 137. b.

Nota, que in brief de Mesne, Et in briefs de Admeasurement, ils n'averont forsque deux Countyes, & deux Proclamations: Mes in brief de Gard, ils averont 3 Countyes, & 3 Proclamations.

Auxi nota que sont divers manners } Droit de Gard.  
de actions de Gard. sc. brief de } Ejectment de Gard.  
Ravishment de Gard.

Et dicitur que les briefs de Droit de Gard, & de Ejectment de Gard fuer al Common Ley, devant ceux statuts, Et pur ceo sont appell de Communi Custodia: Mes le brief de Ravishment de Gard est done per le stat. Westm. 2. cap. 35. Fitz. 139. 1. que devnat fuit forsque Trespals.

Mes al Common Ley, in brief de Droit de Gard, & in brief de Ejectment de Gard, ils n'averont auter proces forsque Summons, Attachment, & Distress infinite, & issint voil delayer les gardians infinite, &c. Sed ore plus hastife remedy est done per les statuts, sc. que in ceux deux plees (de droit de Gard, & de Ejectment de Gard) le party avera Summons, Attachment, & un grand Distress, & si le def. ne vient al grand Distress, que le plt. avera un auter brief Retornable cye longe temps, que 3. Countyes poet estre tenus; Et in chescun County Proclamation serra fait, & le brief serra lye un foits, &c. Et si le Def. ne veigne, &c. il serra forejuge de son Gard, &c. Fitz. 143. s. & Fitz. Retor. de Vic. 41.

Et le Vic. causer le brief chescun foits destre lye in plein County, & auxi le Proclamation destre fait in plein County.

Communi  
custodia.

When any suit dependeth between parties for the wardship of an heir, or land, or both, by the common writ de Communi custodia, 52 H. 3. 7. Summons shall be made, &c. and when they have passed to the great Distress, there shall be a time given, wherein there may be holden three Counties at the least, in every of which Counties there shall be open proclamation made, that the deforcer shall appear in the common place at the day contained in the writ, to answer the Plaintiff, at which day if he do not appear, and the proclamation be so testified, the first, second and third time, judgment shall be given for the Plaintiff, saving the Defendants right, if he will at another time defend the same; In the same manner it shall be done in an Action of Trespals, when any man complaineth himself to be eject from such wardships. Westm. 2. 13 Ed. 1. 35. Vide stat. de Marl. cap. 7.

Ejectione  
custodie.

This stat. of Marl. 52 H. 3. cap. 7. is in these words, If the Def. come not to answer within the said half year, For the Sheriff cannot get his body, to have it before the Justices, to answer, &c. now by these words it may seem that the Sheriff ought to take the body of the Def. or Deforcer, and to imprison him by force of this Distress; But the words

words are not so to be understood, or rather seem to be of none effect, for in the Writ of Distress no mention is made of the taking of the body of the Def. And therefore in such case the Sheriff shall do no other thing, but only to return Illues upon the Def. by force of this Distress, i.e. of all his goods and chattels, (other than such as are excepted by the Stat. of Westm. 2. cap. 39.) And then as a Rebel, &c. the Def. shall lose the seisin of the Ward, &c. Lectur.

*Aux si brief de Droit de Gard soit port, & Distress ove Proclamation is-  
suet, & pendent cel brief le Proces est discontinue per Demise le Roy, ou d'af-  
cun party, &c. in ceo case in le Resummons, le pls. ou ses executors avera  
Distress ove Proclamation, &c. Stat. 2. cap. 35.*

## C A P. CIII.

The Sheriff is to make certain Purveyances for the King.

10 E. 3. c. 4.  
14 E. 3. c. 19

**B**y the old Statutes it was provided, that all Purveyances that should be made for the King's great Horses, so long as they did sojourn in any County, should be made by the Sheriffs of the Counties, where such Horses did sojourn, and not by any other; And that the Purveyances made by the Sheriff in this case, shall be delivered to the Keepers of the Horses, by Indenture. And the Sheriff was to make such Purveyances, of the issue of his Bailiwick: And the number of the Horses, for which the Sheriff should make such Purveyance, should be contained in his \* Commission or Warrant, &c. And that no Purveyance should be made over this number, saving that the chief Keeper had a Hackney; And the Sheriff was to take good heed that the County were not charged of more than should keep the Horses, but for every Horse a Servant, without bringing Women, Pages, or Dogs with them. And if any more were found abiding in the charge of the Countrey, they were to be brought to prison, there to remain, till the King had sent his will. 14 E. 3. 19. But now quere of the validity or use of these Statutes. Dicitur that it appeareth by the Roll, that this Stat. of 10 E. 3. is holden for to be no Statute.

\* Command-  
ment.

14 E. 3. c. 19.

And in the same manner it was commanded to the Sheriffs, that they should make Purveyances for the King's Dogs, of the issues of their Bailiwicks: And that such Purveyances should be made by none other, but by the Sheriffs. And that it should be contained in his commandment, the number of Dogs, for which he should make Purveyance, over which number no Purveyance should be made, so that they should live of their certain, without charging the County. And if any found himself grieved against this Ordinance, he should recover against the Sheriff for such grievance done unto him. Quere also of the use of this Statute.

*Purveyance  
for Horses.*

*For Dogs.*

## C A P. CIV.

## The Sheriffs Courts.

**I**t appeareth by Fineux Chief Justice 12 H. 7. that at the first all <sup>12 H. 7. c. 18. 2.</sup> administration of Justice was in one hand, <sup>Br. Lect.</sup> i. e. in the King, (so as no Law was used, nor Justice administered, but only before the King himself) but afterwards the administration of Justice was divided into Counties, so as this power was committed to the Sheriff within every County: And for his better government of the County, and for the punishment of evil doers therein, the Sheriff had two Powers of Courts appointed unto him; the one the Sheriffs Tourn, unto which all the County, i. e. every man of a certain age should come (yea were compellable to come) there to hear the articles and things given in charge, that so they might not be ignorant of the Laws, whereby they were to be governed, and where also they were to be sworn to their allegiance to the King; the other was the County Court, the which was to give remedy between man and man, for any thing between them under 40s. And so by these two Courts all the County was governed at the first.

Tourn.

County.

Leets.  
Hundred  
Courts.

Afterwards, for that this was too great a thing for the Sheriff (being but one person) to do, by reason of the multitude of people, and for their ease (and better government, and more easie administration of Justice) Leets were derived out of the Tourn, and were granted to the Lords of Franchises or Mannors; And Hundred Courts were derived out of the County Court, and were granted or letten by the Kings of this Realm to the Lords of certain Liberties (especially to Religious men, Noble men, and others of great place) to hold plea also under 40s. of Contracts, &c. made within the Hundred.

The Hundred Court is to be kept every three weeks (by the Wapstiffs of the Hundred.) And the Judges of this Court are the Suitors.

And there may be holden every Plaint between party and party, as there may be in a Court Baron: And this Hundred Court is to the same effect as the Court Baron: And it is the King's Court Baron.

Note that the Hundred Court, is where a man hath by the King's grant a Court Baron for all the Inhabitants of the Hundred, or of some other great Precinct, to be holden before him, or his Wapstiff, &c. and it is in all respects as a Court Baron. 12 H. 7. 17. Finch 122.

And all the Inhabitants within the Precinct of such Liberty or Hundred, by reason of their Tenements there, shall be Attendant, and owe suit to the Hundred. Rede. 12 H. 7. fol. 17. Finch 248.

Hundred Courts (certain Franchises excepted) were after taken into the Sheriffs hands again, and were re-joynd unto the County Court, and that by force of the Statutes of 2 E. 3. cap. 12. & 14 E. R. cap. 9. See Fitz. Petition 1.

And now the Sheriff is Judge not only of that grand Court for the County (called now the Sheriffs Tourn) but also he is Judge of all the Hundred Courts which be not given away from the Crown. V. 9.

Minsh. verbo Baile, saith, That these Hundred Courts (certain Franchises excepted) are by the Stat. 14 E. 3. Stat. 1. cap. 9. brought into County Courts.

And he describeth what a Hundred is. Verbo Hundred.

Sir Fr. Bacon writeth, that by occasion of many mischiefs falling out

out at those great Assemblies of the Sheriffs Tozne, the King was moved to allow subdivisions of every County into Hundreds, and every Hundred to have a Court, whereunto the people of every Hundred should be assembled twice a year, for survey of Pledges, and use of that Justice which formerly was executed in that Grand Court of the County (or Sheriffs Tozne) And that the Count or Earl appointed a Bayliff under him to keep the Hundred Court. V. 8.

The Sheriff hath now the keeping of two Courts for the County, committed or assigned to him, sc.

1. The Tozne for the government of their County, wherein he is to enquire of Criminal causes, and to reform common Nusances, &c. throughout the whole Shire.

2. The County (or Shire) Court, to hold plea within their County of debts, detinue of chattels, trespasses, and the like, being under 40s. and to replevy the cattel distrained and impounded by others. But if the Sheriff shall hold any plea in any other Court than in the County Court, it is coram non Judic. 7 E. 4. 23. Br. Justices 3.

But yet in this County Court, by a writ of Justices, a man may sue for any sum. Also in this Court the Sheriff by a writ called an Exigent, is to proclaim men sued in the Court at Westm', to render their bodies, or else to be outlawed. All which more particularly see more fully in that which here followeth.

See more of these three Courts, sc. the Tozne, and the Hundred, and the County Court, Sir Fr. Bacon his use of the Law, pag. 5. &c.

## CAP. CV.

## The Sheriffs Torne.

The Booke called *Speculum Justiciar.* libro 1. cap. 16. treating of the Sheriffs Torne, saith thus,

Co. 9. pref.

**S**heriffs of ancient Ordinance do hold general Assemblies twice a year, in every Hundred, whither all the Freeholders within the Hundred are bound to come, by the service of their fees, that is to say, once after Michaelmas, and another time after Easter: and because the Sheriffs for the doing hereof make their Tozns (or Courses,) through the Hundred, such Assemblies are called the Sheriffs Tozne, or Sheriffs Course. *In chestem Hundred.*

And Mr. Bracon writeth thus, Torne de Vic' est Circuitus Vic' per omnia Hundred' Comitatus sui, bis in Anno terminis & locis stat. & usitat. populi Comit' pro pace Regis observand'.

And Master Lambert saith, that this Court of old was called also the Sheriffs Hote.

Brit. fol. 71.

This Court was ordained to be holden in every Hundred for the ease of the people; and therein the Sheriff is to deal with matters touching the King himself, and with matters touching the Common Wealth, (sc. to enquire of Criminal causes, and of common Nusances, and them to reform) And so this Court (the Sheriffs Tozne) is for the administering of Justice Distributive. But this Court was not ordained for any particular or private matters between party and party, but for such things the County Court, and the Hundred Court, were appointed; and in those Courts Justicia Commutativa is administered.

D d

So

So then in this Court it belongeth to the Sheriffs to enquire of all offences personal, and of all the circumstances of offences done in those Hundreds, and of wrongs done by the Kings and Queens Ministers, and of wrongs done to the King, and to the Commynalty, &c.

And such things as the Sheriff could not redress in the Torne, were used to be presented by the Sheriff in the Eschequer. Spec. Justic. libro 1. cap. 17.

*Suiters.*

It appeareth by Britton, that all the Freeholders, and terretenants, and other persons of the age of 12 years or above, which are resident or inhabiting within the Hundred, ought to come to the Sheriffs Torne, (none excepted but Barons, Clergy-men, and women, children under 12, and men above 60) V. 8. for these, their presence was not, nor is not necessary there, for that they are never sworn upon any Enquests, especially to enquire of any thing inquirable before the Sheriff. See 52 H. 3. c. 2. & 10. & Br. Leet 42. & 39. & Finch 125. Fitz. 160. c. 161.

And all these did appear at this Court to give or renew their Pledges for their Allegiance. V. 8.

Note, Barons, &c. although they are exempted from their Appearance at the Sheriffs Torne, for any matter or cause which appertains to the Torne, yet the words of the said Stat. are further, *Nili eorum presentia ob aliquam causam specialiter exigatur*, by force of which words, if any Baron, or any other of the said persons exempted, shall be summoned to come to the Torne for any other special cause, as by the Kings commandment upon any special occasion; Or for to aid the Sheriff in executing his Office there, if any shall make resistance; Or for to give in evidence concerning any Purpresture, or other thing there inquirable, and lying within their knowledge; Or upon other the like occasion; Then such persons upon such cause, ought to come to the Sheriffs Torne, &c. Lectur. Mri. Chiborne Anno 1 H. 8.

Also if any Baron, Prelate, or other Clergy-man, or woman, have any lands or tenements which they hold by <sup>+</sup>Suit-service to the Sheriffs Torne, then they ought to come and appear there, and to do suit there, according to their said tenure. Quere.

Concerning Clergy-men the words of the Stat. of Marlebr. cap. 10. are thus, *Necesse non habent ibi venire Archiepiscopi, Episcopi, Abbates, Priores, nec aliqui viri Religiosi*, by the equity of which words all secular Priests seem also to be intended: And yet by the Common Law, men of Religion, and women were exempted from appearance at the Sheriffs Torne.

All men-children of the age of 12 years, are compellable to come to the Sheriffs Torne, there for to hear the charge, and so learn the Laws, &c. And also to be sworn there to the King, and to be his lieges-men, (or to be his faithful and loyal Subjects, &c.) Br. Leet 39. & Fitz. 161. a. Britton dicit eos jurare, quod Regi fidem portabunt, quodque neque felones erunt, neque eis Consentient. Cow. 82. But they shall not be sworn to enquire, or to present any thing there; for no man shall be sworn upon or in any Enquest; &c. before he cometh to his age of 21 years. Lit. 259. & Co. L. 68, 122. b.

Townships shall not be amerced by Justices, because all being 12 years old come not before the Sheriff and Coroners, to make enquiry of Robberies, burning houses, and other things pertaining to the Crown, so that there come sufficient out of those Towns, by whom such Enquests may be made full: Except Enquests for the death of a man, whereat all being 12 years of age ought to appear, unless they have reasonable cause of absence. 52 H. 3. cap. 24.

And

And yet tenants in ancient demesne are not bound to come to the  
 Br. Leet 38. Sheriffs Torne. Fitz. 161. c. Br. Aunc' Dem' 43, 49.

Also they which have Hundreds of their own to be kept, shall be  
 52 H. 3. c. 1. bound to appear at the Sheriffs Torne, but in the Bailiwick of Hun-  
 dred where they be dwelling. Stat. 52 H. 3. cap. 10.

The English Statute-Books are so translated; but the old Latin  
 Statute-Books are in these words, Qui in diversis Hundredis habeant  
 Tenementa, non habent necesse ad huiusmodi Turnos venire, nisi in  
 ballivis ubi fuerint conversantes, and with this also agreeth the old  
 French.

Fitz. 160. a.

And if any man who hath lands or tenements in divers places of the  
 County and in divers Hundreds, be distrained to come to the Sheriffs  
 Torne, in any place where he dwelleth not, (but that he be dwelling  
 within the precinct of another Hundred) then he may have a writ di-  
 rected to the Sheriff, commanding him to discharge the party for coming  
 to any other Torne, &c. than within the Hundred where he dwelleth.  
 The form of which writ you may see Fitz. 160. a. & Register. fol. 174.

Also if any Lord hath a Leet or View of Frankpledge of all his  
 Tenants of his Mannor, which is within the Hundred, those tenants  
 are not compellable to appear at the Sheriffs Torne, for that the Torne,  
 and the Leet, are both as one Court: And the Leet is no other, but  
 where the King hath granted to a particular man to hold this Court  
 within a certain precinct (as within his Mannor or Signiory.) So that  
 when it is in the King's hands, it is called the Sheriffs Torne, for that  
 the Sheriff is to hold or keep it; And when it is in the hands of ano-  
 ther person (by the King's grant or otherwise) it is called a Leet or a  
 View of Frankpledge, and such as ought to appear at the Leet  
 shall not be compelled also to appear at the Torne; For no man shall  
 be compelled to appear at two Leets. Lectura Mr. Chiborne.

Quære if the Lords (themselves) of Leets, be not compellable to  
 appear at the Torne.

If a man hath a View of Frankpledge (or a Leet) of all his tenants  
 within his Mannor, and he hath one tenant whose house wherein he  
 dwelleth, part thereof doth extend it self within the Precinct of his  
 Signiory, and part thereof within the Precinct of the Hundred out of  
 his Signiory or Mannor, such a tenant ought to appear at the Sheriffs  
 Torne, and not at his Lords Leet, for that the Torne being the Kings  
 Court shall be preferred Lectur. præd.

If a mans house wherein he dwelleth extendeth or standeth in two  
 Counties, or Hundreds, (sc. his Hall, &c. in the one, and his Chamber  
 wherein he lieth in another) here he shall be adjudged to be of that  
 County or Hundred wherein he coucheth or lieth in the Night. ibid.

Again, all Resiants within the Hundred ought to appear at the  
 Sheriffs Torne, and therefore if I do hire a servant for one year, and  
 the second day after he is come to dwell with me, the Sheriff holdeth  
 his Torne, my servant ought to appear there. But if a stranger cometh  
 and lieth at my house three or four days, within which time the She-  
 riff holds his Torne, such stranger shall not be compelled to appear at  
 the Torne; if he hath any dwelling place of his own, or elsewhere  
 resiant; Otherwise he may.

A Sojourner ought to appear at the Torne. Ibid.

By the Common Law none is compellable to appear at the Torne  
 for his lands, for this suit to the Sheriffs Torne (or Lords Leet) is a  
 Suit Royal, which is always by reason, of the person, and not of any  
 Land. Ibid.

See hic cap. 8. and the reason why it is called Suit Royal.

An Alien resiant within the Hundzed is compellable to appear at the Tozne; and to be swozn there to the King for his Allegiance: and yet this makes him not a Denizen. *Ibid.* & 14 H. 4. fol.

But men of great age (sc. above 70) and men Decrepit, and such as are sick, were at least excusable by the Common Law.

Note, that if the Leet of any Lord shall happen to be seised into the King's hands for misuser, or for any other cause, Then all the people resiant within that Leet so seised, &c. shall now come to the Sheriffs Tozne. *Ibid.*

Also when the Lord of a Leet shall neglect to keep his Leet (at least once a year) if the Sheriff shall hold his Tozne within that Hundzed during such times of neglect, those which be Resiants within such Lords Leets may be compelled to come to the Sheriffs Tozne, there to be swozn to their Allegiance (if they were not swozn befoze at the Leet;) and there to be swozn to enquire of things appertaining to the King and Common wealth (happening within the Precinct of the Leet so neglected,) which services or suit otherwise would utterly be neglected and lost through the defaults of Lords of Leets. *Ibid.*

*The Jury.*

In the Sheriffs Tozne after the appearance of the suiters, twelve (at the least) of the most discreet and sufficient Freeholders within the Hundzed, ought first to be impannelled and swozn (by the Sheriff) to enquire of, and to present all things there enquirable and presentable: and after (as a second Jury) all the rest which appear there ought to be swozn (*per decenaries, & per viles*) the Tything-men with their Tythings, and these shall present or give in their verdict, to the first Jurors, such things as shall be given them in charge. And if they shall conceal any thing, they shall be amerced: But if they shall present any thing that is false, and the 12 first Jurors shall find that their verdict is false, for this they shall not be amerced.

And when the Decenaries or Tythings have delivered their presentments to the said first Jury, and that the first Jury are agreed of their presentments, then they must give up to the Steward or Court Keeper, such presentments as they will stand to and avow; and if there be any felony, they must deliver those up by themselves to the Steward privily, and the rest openly.

But it is used in some places, that one Enquest is impannelled for the body of the Hundzed of the Freeholders, to whom the Constables (or Thirdboroughs, &c.) of every Town and Village within the same Hundzed, which come to the Sheriffs Tozne, do present upon their oaths, the defaults within their several Towns to the Steward, and he informeth the Deceners, of such things as they have so presented.

Fineux in 12 H. 7. fol. 18. saith, That every man within the Hundzeds, Burroughs and Towns, ought to come to the Sheriffs Tozne (by reason of their allegiance.) And that the Constables of the Hundzeds, and Petty-Constables of the Burroughs and Towns, ought there to present the defaults of misdoers, &c. sc. every of them must present the defaults committed within their several Limits: and this presentment of the High-Constables, and Petty-Constables shall be made and delivered, in, to the said first Jury (as it seemeth) and that upon Oath, otherwise their presentment is void.

*The sufficiency of those Jurors.*

But by the Stat. made 1 R. 3. c. 4. it is now enacted, That no Bayliff, or other Officer, shall impannel or return in any Pannel, any person to be taken or put in, or upon Enquiry in any Sheriffs Tozne, but such as be of good name and fame, and which have Freehold lands or Tenements within the same County, to the clear yearly value

value of twenty shillings at the least, & Copyhold lands of Tenements within the same County to the clear yearly value of 26 shillings and eight pence at the least. And if any Officer shall impanel, or Return any person contrary to this Statute, he shall lose for every person so returned or impanelled (not being of such sufficiency) forty shillings, and the Sheriff other forty shillings, the one half to the King, and the other half to such as will sue for the same, &c. And besides every Inditement in other manner taken, before the Sheriff in his Torne, shall be void. Stat. 85. See Stat. 11 H. 7. cap. 26.

*Lou ceo Stat. de 1 R. 3. parle que tiel Furours expender 20 s. Freehold per Ann. ou 26 s. 8 d. Copibold, Semble que ceux sommes doient estre certain & Annual, & nemy per reason del Orchard, de Garden, de Market, de Wreck, & bujusmodi, que sont forsque Casual, & nient certain, home ne serra jure de tiel Enquests, &c.*

*Mes si deux Joyntenants sont, & que eux ne poent expender forsque 20 s. Freehold per Ann. uncore eux ambideux poent estre jurus pur ceo, &c. come semble.*

Westm. 2. 13.

By the Statute made An. 13 E. 1. c. 13. it is ordained that Sheriffs in their Tournes (and in other places where they have authority to enquire of Malefactors or trespasses) shall cause their Enquests to be made (or make their inquisitions) by 12 men at the least, and by lawful men, which shall put their seals to such Inquisitions, or Inditements, that so it may the better appear that the Inditement was taken by twelve lawful men.

*Their number.*

If there shall be 15 or 16 such Jurozs upon the Inquisition, it seems eth good; and if but 12 of them agree, and those 12 shall set their seals to such Inditement or Inquisition, it sufficeth: But if all the 16 shall agree, then also must all those 16 set their seals thereto.

At the Common Law, and until this Stat. of Westm. 2. cap. 13 dicitur, that Sheriffs in their Tournes would often Endite certain persons by five or six men, and by such as were outlawed, &c. and by force of such Enditements would imprison the persons so Indited, and them keep in prison, until they had made a Fine to them, at their own wills, and that the persons so imprisoned had no remedy, to prevent which mischief this Stat. of Westm. 2. was made.

Afterwards, for that divers Sheriffs, used to alter or change such Enditements, after they were lawfully taken (i. e. where the Enditement was for Felony, they would make it Trespass, Et c. Converso) and the better to conceal such their abuses they would oftentimes imbezil the same Inditements, To prevent which mischief there was another Stat. made Anno 1 Ed. 3. cap. 17. as followeth.

And because the said Inquisitions taken by the Sheriffs should not be changed, imbezilled nor concealed, therefore by another Statute made Anno 1 E. 3. c. 17. it was enacted, that Sheriffs (and Bailiffs of Liberties, and all others who take Inditements at their Tournes, or elsewhere) shall take those Inditements by Roll indented (or Indentures made between the Sheriff and the Jurozs) whereof the one part shall remain with the Inditors or Jurozs, under the hand and seal of the Sheriff, and the other part with the Sheriff, or him that taketh the Enquest, so that the Inditement shall not be imbezilled, &c. and so that one of the Enquest may shew the one part of the Indentures to the Justices, when they come to make deliverance. But now the Sheriff or his Steward is to send or deliver their part of these Inditements or Presentments to the next Sessions of the Peace, &c. See hic postea Stat. 1 E. 4. c. 2.

*The Presentment shall be indented.*

*Uncore*

Uncore si le Vic. prender leur Enquestes ou Inditements sans Indentures nient obstant ceo ils sont assés sufficient : Car ceo Stat. ne voet que s'ils autrement font que ils serra voids, ou nul, come autres Statutes exprefs.

Auxi coment que tiel Enditement ou Inquisition ne soit Enseale, uncore si soit prise, semble d'estre sufficient. *Causa qua supra.*

Auxi per le dit Stat. de Westm. 2. cap. 13. tiels persons que fuer<sup>2</sup> Endites en le Torne, per 12 loyal homes, le Vic. adunc avoit power de imprisoner eux, (come ils puissent al Common Ley) Et le power del Vic. in ceo point remaine tanque le fesans del Stat. de 1 E. 4. cap. 2. le quel veies hic poitea.

Mes per le Common Ley le Vic. poet aver tenus son Torne a quel Lieu que il voile, deins le Hundred : Come si un Pont, ou Cawsey, ou un Common Chimin fur defectifve, &c. il puissoit aver appoint son Torne d'estre tenus la lou tiel default fuit, &c. Lectur. Mr. Chiborne.

Auxi per le Common Ley ils puissent aver tenus leur Torne, quant ils pleira ; Et a quel temps del Ann que ils voile ; Mes per le male & Covetousness del Vic. ceo order que fuit reazonable, ils subvertont in grand prejudice del common people, Car ascun Vic. voile tener leur Torne plusors foits pur le intent que ils voile aver Amercements de ceux queux ne appearont, & nemy pur le Common Weale : Auxi ils voile tener le Torne in tiel Lieu ou ils pense que plusors voile fair default pur le entent d'aver leur Amerciements : Auxi ils voile aver tener leur Torne a quel temps ils pense que plusors voile fair default, pur aver leur Amerciements, & sic vent pur leur singuler & private profits. Pur remedy queux mischiefs le Stat. de Mag. Charta, cap. 35. provide sic, Nec aliquis vicecomes vel ballivus suus fac' Turnum suum p Hundredum, nisi bis in Anno, & non nisi in loco debito & consueto, sc. semel post Festum Pasche, & iterum post Festum Sancti Michaelis : Et nient obstant ceo uncore ils voile tener leur Torne al auter busie temps, sc. en temps de Harvest (que fuit apres Festum Pasche,) Et in Lent que fuit apres Michelmas.) Et pur remedy ceux fauxities & mischiefs un auter Stat. fuit fait Anno 31 E. 3. c. 14. per quel fuit ordeine que le Vic. tiendre son Torne deins un mois prochain apres le Feast de Pasche, & deins un mois prochain apres Michelmas.

*The place.*

So note, that the Sheriff ought to keep his Torne in every Hundred within his County, as is aforesaid Co. 9. Preface. Fitz. 160. a. 9 H. 3. c. 33. Br. Lect. 42.

But the Sheriff ought to keep this his Torne no where but in due place and accustomed, and that by force of the said Statute of Magna Chart. cap. 35.

*Time.*

And if the Sheriff shall not keep his Torne in loco consueto, he may be indicted and punished for the same. See Dyer 151. Sir John Savages Case, & Kiel. 132.

Also the Sheriff ought to keep, or to hold his Torne but twice in the year sc. once within one month next after Easter, and again within one month next after Michaelmas, And if he shall hold his Torne at any time after the month from the said feast days of Easter and Michaelmas, it is void, by the Stat. 31 E. 3. And all indictments and presentments (either of Felony, or otherwise) so taken by him after the said months are Coram non Judice, and altogether void. See 38 H. 6. fol. 7. And besides the Sheriff shall lose his profits thereof, &c. Br. Lect. 17. & 21. & Indictments 9. 27. Vide 10 Co. 76. Stamf. 84. & 6 H. 7. f. 2.

31 E. 3. c. 15.  
6 H. 7. f. 2, 3.  
Fitz. Torne.

The reason why the Torne must be holden within the month next after Easter and Michaelmas, appeareth in the Statute of 31 E. 3. cap. 15. f. 2.

15. sc. for that the Torne being held in Lent, it hindred Devotion, and being in Hardest, it hindred the people in their busiesses, &c.

*Mes posito que le Vic. teigne son Torne apres le mois, & fait le Record d' aver date deins le Mois, & un home est Endite a misme le Torne, de Felony, Et ceo Record vient devant Justices queux ont power de luy arreigner sur cel Record, Si cestuy que est issint Endite voile dire que le Torne fuit tenu al autre jour que le Record fait mention, la semble il ne serra resceivre a defeater cest Record per tiel Averment, &c. tamen quare inde intant que son vie est in jeopordie, See hic cap. 42.*

Also the Sheriff keeping his Torne oftner than twice a year, or after the said months (next after the Feast days of Easter, and of St. Mich. the Arch-Angel) he may be indicted for the same, as it seemeth.

Fitz. Leet 11.

Note (by some opinions) that the Sheriff in his Torne holden after Easter, ought not to enquire of any action popular, &c. but only he is then to take their suit which are suiters, and to take the view, sc. quod Tithinga tenentur, sc. that all above the age of twelve years come and appear there, &c. (the cause of which their appearance, see hic cap. 8.) But at his Torne holden after Michaelmas, then he shall enquire of such things as are there inquirable. See Stat. 9 H. 3. c. 35. 8 H. 7. 4. ab. & Br. Leete. 23.

Co. 4. 33. &c.  
6. 12.

This Court (called the Sheriffs Torne, Turnum) is a Court of Record, and is belonging and incident to the office of the Sheriff, and ought not to be severed from it: And the Sheriff is Judge therein, and is to appoint Clerks under him in this Court, such as he will answer for at his peril. *Est Incident, Vic. Judge.*

4. E. 3. 4. 31.  
Re. Officer.  
81.

But the Sheriff ought not to take any thing, for the holding or keeping of his Torne: Neither can he prescribe to take any thing, for that he is an Officer removable. *Ne poit prescrie*

Fitz. Leet 11.

The stile of the Torne or Court must be thus, Vis. Francipleg' Domini Regis tent' apud L. coram vice' in Torno suo, &c. And not Torn' vice' tent' tali die apud L. For this word Torne signifieth but the perambulation of the Sheriff, and is not the Name of the Court. *The Stile.*

*The form of a Warrant to proclaim or warn the Sheriffs Torne.*

A B. miles Vicecomes Com. Cantabr. J. S. ballivo Hundred' de R. salutem. Ex parte Domini Regis, tibi mando, quod proclam' fac' vis. Francipleg' Domini Regis, apud L. tenend. coram me in torno meo tali die, &c. Et interim venire facias ad tunc & ibidem 24 probos & legales homines, una cum quatuor hominibus, & præpositis cujuslibet villæ, Hundred' præd'. Ad faciendum quod eis ex parte Domini Regis ad tunc & ibidem fuerint injungend'. Et quod tunc tu sis ibidem in propria persona tua, ad faciendum quod ad Officium tuum pertinet. Et hoc non omittas sub periculo incumbente. Datum, &c.

## C A P. CVI.

What things are inquirable in the Sheriffs Torne,  
at this day.

**T**he Sheriffs Torne in ancient time was one of the highest Courts in it self, which the King had: For at the first they had more authority than the Justices of Peace now have; for the Sheriffs in their Tournes did enquire of all Treasons which were Treasons by the Common Law, and of Felonies, &c. Also in the Torne they did Enquire of Alienations without Licence by the King's Tenants, &c. And of Alienations in mortmain; And of such as held by Pontage, or to repair any Bridge, &c. and as the great Enquest (at the Assises, or Sessions of the Peace now) are sworn to inquire of matters through the County, so this Torne was in stead or place of such great Enquest, &c. Lectur. Mr. Littleton super Stat. Westm. 2.

Also in this Court the High Constables of Hundreds, and Petty Constables were appointed and sworn; breakers of the Peace were punished by fine and imprisonment; the parties beaten or hurt were recompenced upon complaints of Damages; All Appeals of Murther, Mayhem, and Robbery, decided; Contempts against the Crown, publick annoyances, Treasons and Felonies, and all other matters of wrong, betwixt party and party, for lands, or goods, &c. Sir. Fr. Bacon of the use of the Law, p. 5, 6.

*Treason.*

The Sheriff in his Torne at this day hath power, and ought to enquire of such as are mortal Enemies to the King, Queen (his wife) or to their children: And of the Councellores, Procurers, Consenters, and Aiders; and of all Treasons at the Common Law. Cromp. 212.

Also of such as falsifie the King's Seal. Stat. 18 E. 2.

And such as falsifie the Kings money; or shall wash, or clip the same, Finch 241. but *P. Brooke* maketh a quare thereof, titulo Leet 26.

*Felonies.*

They are also to enquire in their Torne, of all manner of Felonies by the Common Law, as of murder, manslaughter, and other Homicides: See the Stat. 52 H. 3. c. 24. & 3 Ed. 1. c. 11. & Britton. Cromp. 212.

And yet see Br. Leets 26. & Fitz. Torne 5. and the Book 22 E. 4. fol. 22. by the opinion of all the Justices, that the power of the Sheriff in his Torne, was to enquire of all Felonies, at the Common Law, except the death of a man, Finch 125.

They are there to enquire of Burglaries, Robberies, and Thefts, and of the receivers of such offenders.

Of burners of houses, or stacks of corn feloniously.

Of breakers of prison, being therein for Felony,

Of ravishing of women, Stat. 18. E. 2. Cromp. 212. Yet the Book 22 E. 4. & Br. Leet 26. & Fitz. Torne 5. are contrary, as being a Felony by Statute, and not by Common Law. Sed de hoc quare.

Of Poisoners.

Of Sorcerers, Conjurers, and Witches: which offences were Felony by the Common Law, and the offenders thereof were to be burned. See Fitz. 269. b.

Of Petty Larcenies, in stealing Hens, Geese, or Sheafs of Corn, &c.

Of such as take Theft-bw.

*Put*

Br. Leets 26.

But note, that the Sheriff in his Torne, hath no authority to enquire of any Felonies by stat. as cutting out of tongues; putting out of eyes, &c. 28 E. 3. 95. 21 E. 21. Fitz. Torne 5.

Note also, that no Sheriff within any of the Counties of Wales, shall have power to enquire of any manner of Felony, in any their Leets, Law-days, or Tournes, within the same Dominion to be holden. Stat. 35 H. 8. c. 26.

Also Sheriffs shall enquire in their Tournes of the escape of any Felon; And of any person imprisoned (for any other cause) which is let go without warrant or mainprise. Stat. 18 E. 2.

And of such as have abjured the Realm, and are returned without licence.

Of Outlaws, which return without the Kings Warrant.

Of Treasure trove.

*Nota, que Coyne trove, coment que ne fuit abscondita in terra, est Treasure Profits le Roy. trove, (& semble Inquirable icy) Br. Presentments 24.*

*Issint semble de money, plate, ou bullion trove, le owner nient connus; Car ceux serra dit Treasure trove, & le Roy avera eux. Br. Coron. 176.*

Cromp. 213.

Of Wayfs, and Estrays.

Of wreck of the Sea, found and retained.

Of those which claim any Franchise real.

Of new Franchises, or Customs, levied on land or water.

If any man hath a Fair, or Market, by grant or by prescription, and doth not hold, or keep the same Fair or Market, as he ought to do.

It seemeth also, that the Sheriff in his Torne ought to enquire of all Purprestures and Encroachments made upon the King's Lands or Franchises, &c.

Now concerning this word Purpresture, there is no such word in use in the Latin Tongue, but only in our Law; And in the general sense this word Purpresture is now taken for any thing which any Man by wrong hath encroached upon another, and (by inclosure, or usage) appropriated unto himself. M. Manwood, fol. 59.

And Skeene de verbo Purprestura maketh three sorts of this offence: One against the King, the second against the Lord of the Fee, the third against a Neighbour lying near him.

Concerning the King this word Purpresture may seem to be, when another doth take or incroach any thing upon the King, which he ought not to have, whether it be in Jurisdiction, Franchise, or Land: As if a Man do hold a Fair without the King's Grant, or lawful Prescription; or do incroach or claim any liberty within the King's Forest; or do levy a House, Wall, or Hedge, in the King's Highway; or upon the King's Land: The Penalty in these Cases is, that he which maketh such Purpresture shall be grievously amerced, and the Purpresture shall be pulled down and destroyed for ever at the King's Pleasure. And if it be in Land, or Buildings, after the Purpresture is found by Inquest, and the value of it assessed, it may be set at yearly Rent to be answered to the King, if the King will. Lecture Mri Treherne. And herewith agreeth M. Glanville, libro 9. cap. 11. tit. Purpresture. See hic cap. 9.

Vide plus Stat. 4 E. 1. cap. 4. & Cromp. *Autor des Courts* 152. & 203.

Vide Minch. verbo Purpresture & scribe hic.

Also concerning this word Nusance, Nocumentum, in our Common Law significth any thing which tenderth either to the general hurt and annoyance of the King's Liege People, or else to the hurt and annoyance of some one particular person. But in the Sheriffs

C e e

Torne

Torne (as also the Leet) they are to enquire only of Common Rusesances.

And the Sheriff in his Torne is also to enquire of Purprestures, Wsurpations, or Encroachments, made in any of the King's Demefne Lands, Woods, or upon Highways, Common Streets, or Waters, to any Common Annoyance. Stat. 18 E. 2. Vide Co. L. 277. b.

Of all Walls, Houses, Hedges, and Ditches, made up, or broken down, to Annoyances. Ibid.

Whether Highways be enlarged according to the Statute of Winchester.

Of Ways and Paths streightened or stopped.

Of any other Rusesances, or Annoyances, in the King's High-way, or in any Common-way, or Path; by turning or altering them out of their ancient place; by Ditches there not scoured. Br. Leet 26. By laying any Carion, or Puck, &c. there.

Of the King's Highways, if they be not enlarged and cleansed of Fushes and Trees according to the Stat. of 13 E. 1. c. 5.

Of Rusesances in any Rivers, or common Waterings, by stopping, streightening, or turning them out of their right Course.

Of Bridges, and Cawties decayed, or broken, and who ought to repair them: or hold any Land to repair them.

And of all other, common or popular Rusesances or Grievances done to divers or sundry of the King's Subjects.

Common Trespasses.

Also the Sheriff in his Torne may inquire of Affrays. Br. Presentments 7.

And of Bloodsheds. Br. Leet 26. Fitz. Torn. 4.

If there be any Misdoer within the Hundred, whereby any Peril may come to any Person, of Life, or of Member, the Name of such Misdoer is to be presented in the Sheriffs Torne.

Of Poundbreaches.

Also all other things being a Trespass at the Common Law, and popular, is there inquirable.

But of such things as are Trespasses by Statute, or Offences against any Statute, the Sheriff hath no power to enquire thereof in his Torne; except the Statute doth expressly therein give Authority to the Torne, or Leet. See 28 E. 3. 95. 21 E. 4. 21. 3 H. fol. 1. Br. Leet 19. & 25.

Neither shall any other thing be enquired of in the Torne, but only such Rusesances, Grievances, Offences, or Trespasses as are popular and common Grievances to many Persons, and therefore Assaults made to a sole or particular Person (although it be done in the Court) yet it is not there inquirable, except there be Bloodshed. Dyer 234. Fitz. Torn 1. 4. Finch 125. <sup>4 H. 6. f. 10.</sup> <sup>Br. Pref. 7.</sup> <sup>2 H. 7. 10.</sup>

Neither can they inquire there, of a Close, or Hedge, debzuised (or broken) for that is particular. Br. Leet 26. Finch 125.

Evil Members.

The Sheriff also in his Torne may enquire of Palefactors in Parks.

Of Takers of Doves in Winter by Doozfalls, or other Engines. 18 E. 2.

Of Usurers; Crompt. 212.

Whether Hue and Cry be duly made upon Robberies, and other Felonies.

Of Hue and Cry levied, and not pursued.

Of Hue and Cry levied without cause.

Of Nightwalkers, Br. Leet 26. and whether Night-watches be duly kept.

Of those which go in Message of Thieves.

Of those which sleep by day, and watch by night, and fare well, and none know whereof they live.

Of those which continually do haunt Taverns.

Also the Assize of Bread, Beer, or Ale broken, is there inquirable. Stat. 18 E. 2. Br. Leet 25.

If any Hostler or Inholder shall make any Horse-bread, which is not sufficient, lawful, and of due Assize, &c. the Sheriff in his Tozn may enquire thereof, and determine the same, by the Stat. 32 H. 8. cap. 41. & 21 Jac. cap. 21.

So if any Hostler or Inholder shall make any Horse-bread, except he be dwelling in a Town being a Thorough-fare, and being no City, Town-Corporate, or Market-Town, wherein a common Baker is dwelling; for Bakers shall make such Bread. 21 Jac. cap. 21.

So if any Hostler or Inholder shall not sell their Horse-bread, Hay, Oats, and Provender, and also all kind of Victual, both for Man & Beast, for reasonable Gain, &c. or shall take any thing for Litter, it is inquirable, and to be determined in the Tozn. And these Offenders for the first Offence shall be fined, &c. and for the second Offence shall be imprisoned, and for the third Offence shall stand upon the Pillory, and after shall be forfejudged for keeping any Inn again. 21 Jac. cap. 21.

False Measures, false Ballances, and false Weights are there enquirable: Stat. 18 E. 2. Also Stat. 9 H. 5. c. 8. the Falsifiers and Counterfeitters of false Weights are here enquirable.

If any have double Measures, (as Bushels, Gallons, Pards, or Ells) and buy by the greater, and sell by the lesser, it is there enquirable. Ibid.

And yet see the Book, 3 H. 7. f. 1. & Br. Leet 19. a Presentment in the Sheriffs Tozn, that a Man did use false Measure of a Bushel, and the Presentment was adjudged to be void, for that it was given by Statute, and the Statute gave no express Authority to the Sheriff to enquire thereof.

If Right-watches be not duly kept (according to the Statute of Winchester) it is there enquirable.

If any Person shall make a Prison of, or in their own Houses, it is there enquirable. Crompt. 212.

Home-foken, or forcible entry into Houses without License, and contrary to the King's Peace, seemeth to be there inquirable. Crompt. 212.

Attachments made by the Officers of the Courts of the East Marches, or West Marches, &c. are there enquirable by the Statute of 31 H. 6. c. 3. But seemeth to be repealed by the Statute 4 Jac. c. 1.

Also the Sheriffs in their Tozn may enquire of all Offences committed contrary to the Statute made 7 E. 6. to avoid the expence, as well of spending, as of the prices of wines: And every Presentment thereof taken by the Oaths of xij Men in the Tozn, shall be of such force, as if the same were taken in the King's Bench.

Also they shall enquire, if all the Jurors and luters which owe lute to this Court be come (18 E. 2.) sc. if all persons of twelve years of age or upward, dwelling within the Hundred, be come to this Court (except Clerks, \*Knights, and Women. Crompt. 213.)

Lastly, the Sheriff in his Tozn, hath Authority to enquire of all other things or offences that are either felony, or trespass at the Common Law: and of all other Articles and Things inquirable in a Court Leet (if there have been default in the Lord in not keeping his Leet, or if they have been omitted, or not formerly inquired of and found, and redressed or punished in the Leet.) For that all Leets were

See 2

at

\* Quare de chivalers.

Fitz. Torn. 5.  
Br. Leet 26.  
Co. L. 168.  
Dyer 13.

at the first derived and taken out of the Sheriffs Torne, so that for default of enquiry in Leets of things there enquirable, the same things there omitted, and not enquired of, &c. ought to be enquired of in the Sheriffs Torne, and if it be there omitted, then to be enquired of by the Justices in Eyre, at their coming into the Country, or else by the Justices of the King's Bench. See 8 E. 4. fol. 21 E. 3. fol. 3. 29 E. 3. 27. 41 E. 3. 26. 43 E. 3. 29. & 18 H. 6. 12.

Br. Pref. 1.  
Crompt. 212.

*De Felony, coment que il soit Enquire deins le Leet, uncore il serra Enquire arere in le Torne, Ut dicitur.*

If it be found in the Leet of any Lord, that a Bridge lying within the Precinct of the Leet is ruinous, and that such a Man ought to repair it, he shall be amerced in the Leet: And yet if after the same default shall be found again before the Sheriff in his Torne, the Party shall again be amerced, the Sheriff may levy that Amercement, and neither the Lord, nor Party hath any Remedy, for this default after the Lord was not presented at the Leet, and therefore being presented at the Torne, it shall be there punished: And if it be not amended before the next Leet, the Lord at his Leet may cause him to be amerced again; and so the Party may be amerced, totes, quotes, at the Leet, and also at the Torne, until it shall be amended. Lectur. Mri Chiburne.

And altho' at the Leet, the Steward, or Jury shall set a Pain upon the Party, to make, or amend the Bridge, &c. before such a Day, yet if the Torne shall be holden before that be amended, the Party shall be amerced at the Torne. Ibid.

It is a good Presentment at the Torne, that such a Man ought and used to repair such a Bridge, notwithstanding that they shew not that the Party hath any Lands to repair the said Bridge.

*Mes le Seignior del Leet (que ad grant le Roy d' aver le Amerciements, &c.) avera les Amerciements (sc. avera allowance del eux in L'eschiquer) sur l'enquiry ewe devant le Vicount ou devant les Justices, quare & vide Fitz. Leet 13.*

And it hath been adjudged that the Power of a Sheriff in his Torne, and of a Steward in a Court Leet, is all one: 22 E. 4. Br. Leet 26. sc. that the same Authority which the Leet hath within the Precinct thereof, the like the Sheriff hath in his Torne, & e converso.

Also the Sheriffs Torne is sometimes in our Books called the King's Leet, and sometimes the Sheriffs Leet, or the Leet of the Torne of the Sheriff: See Br. Leet 21. & 23. which appeareth also by the Style of the Torne, hic antea.

If the Sheriff shall enquire of a Rulance in his Torne, and the same shall be found, which ought to have been enquired of in the Leet of another man, and hath been used to be found there, the Sheriff cannot distrain for the Amercement upon this Presentment, and if he do distrain he is a Trespassor; but if default be in the Lord of the Leet, that he did not inquire thereof, or that the same be not found in his Leet, when it ought to be inquired of, or that it be not punished, or amended, the Sheriff then by the Lord's default may inquire thereof in his Torne: 21 E. 3. 3. 28 E. 3. 95. 10 H. 4. 4. And herewith agreeth the Book of 29 E. 3. that if a Rulance, &c. be within a Franchise, the Sheriff ought not to punish this; but it appertaineth to the Lord only to redress this, for otherwise every Lord might lose his Franchise in every thing: but if apparent default shall be in the Lord, as in not keeping his Leet, or that he will not punish the Offenders, then the Sheriff may enquire thereof in his Torne, and it being found there, the Sheriff may punish the same: See 29 E. 3. fol. 27.

Crompt. 212.

But

But where there is no default in the Lord of the Leet, (either in not keeping his Leet, not enquiring of, or not finding, or punishing, and redressing the fault) there if the Sheriff in his Tozn shall enquire of such things presentable in the Leet, and shall after make his Precept to his Bailiff to distrein for any Amercement assessed for any such thing in his Tozne, such Distreis is tortious, *Et le party poet aver son Replevy & recover damages come semble; Car auterment Vicounts poent tous foits prendre les profits & amerciements de Seigneurs de Leets, issint que ils n'avera aucun profit pur leur Leet. Vide Fitz.Barr. 289. & 29 E. 3. fol. 27.*

*Me les Torne del Vicount, come un overseer del Court Leet, est de enquerir si les Decenaries sont plains, ou nemy; & a presenter les defaults que ne sont redress in le Leet. Finch 32.*

*Et concernant ceux Decenaries, Nota, que pur le melior expedition de Justice, le Hundred fuit divide in 10 Villes, & chescun Ville in 10 Families, d'ont ceux Villes fueront dits Decenaries; & en les Decenaries, chescun serra pledg pur l'auter de son bon gesture (d'ont le Court Leet fuit auxi dit Curia visus franciplegii) Auterment cestuy que prist lui en son meason fuit destre amerce en le Leet. Finch 126. Co. 6. 77. b.*

But if the Sheriff in his Tozn shall enquire of any thing, which is not there inquirable, it is void, as being taken Coram non Judge.

If the Sheriff, or the Steward of the Sheriffs Court shall enquire, or shall take any Indictment, or shall hold Plea, of any thing whereof they ought not, it seemeth to be punishable. *Vide 41 Ass. 30. Br. Contempts 12. The Lord of a Leet fined, for that his Steward did take an Indictment unduly. Also 2 R. 3. fol. 10. a. the Abbot of Crowland was punished (sc. his Liberty was seized) for his Stewards default: And by some Opinious the Lord of a Court Leet, which shall keep his Court Leet by an ignorant Steward, his said Court may therfore be seized in a Quo Warranto.*

*Nota, que le Vic. avera les amerc' & fines (& divers autres profits) del cec Court, Et il n'ad aucun autre chose de levier son grand summ oveisque, mes que chescun Vic. est charge sur son account, sinon de cest Court; car le Torne (& les profits del cestuy) est al Vic': Et est son Court, & nemy le Court le Roy, per Tremayle 6 H. 7. f. 2. 3.*

## C A P. CVII.

**I**t seemeth in former times that Sheriffs, sometimes in malice, and sometimes for their private lucre and gain, did often imprison such Persons as were indicted before them, as well in their Toznes, as also in other places, by Virtue of the King's Writ or Commission to them granted (and which they might have justified to do as well by the Common Law, as also by Virtue of the Stat. of Westm. 2. cap. 13. as it seems). But the Mischiefs thereof appearing, and somewhat to restrain their Power of imprisoning any Man for Malice, or Profit, or other sinister Cause, first Sheriffs were restrained by Statute made Anno 28 E. 3. to make any Enquiry by Writ, or Commission, as followeth.

Whereas in times past, Sheriffs by Virtue of Commissions & general Writs granted to them at their own Suit for their private Gain, did take divers Inquests to indict People at their pleasures; and then took Fines of them to their own Uses, and delivered the Parties so indicted, without

*Vic ne fera  
Enquiry per  
breve, &c.*

without bringing them before the King's Justices: It was therefore by a Stat. made 28 E. 3. ordained, That all such Commissions and Writs should from thenceforth be repealed, and none such after to be granted: So that the Sheriff (by that Statute) is restrained to make any Enquiry by Writ or Commission, except in some special Cases, whereof see Fitz. 92. hic postea.

28 E. 3. c. 9.  
See 42 E. 3.  
c. 4.

Afterwards for that divers Persons were greatly troubled by the inordinate Indictments and Presentments (as well of Felonies and Trespases, as of other things) taken before Sheriffs, their Under-Sheriffs, and other Ministers, at their Tourns and Law-days; which Indictments were often affirmed and found by Jurors having no Freehold, &c. and sometimes by menial Servants and Bailiffs of the said Sheriffs, &c. By reason whereof many People were Arrested, and put in Prison, by the said Sheriffs and their Ministers, and then were constrained to pay them great Fines, to be delivered out of Prison: And further, the said Sheriffs, &c. had the awarding of Process upon such Indictments when they were found, and the assessing of the Fines: And also the said Indictments were often imbezled and concealed: For the reformation whereof it was ordained by a Statute made Anno 1 E. 4. that upon all Presentments and Indictments, which shall be taken before any Sheriff (Under-Sheriff, or other Ministers) in their Tourn or Law-days, they shall have no power to make, or grant out any Process against any Person so indicted; nor to attach, arrest, or put in prison; nor to assess, levy, or take any Fines, or Amerciaments, of any Person so indicted or presented before them, by reason or colour of any such Indictment or Presentment, nor to take of any Person so indicted or presented, any Fine or Ransom; but that the said Sheriff (or other Ministers) shall bring and deliver all such Indictments and Presentments (taken before them in their Tourns) to the Justices of Peace, at their next Sessions of the Peace that shall be holden in the County where such Indictments or Presentments shall be taken, upon pain that every Sheriff, (Under-Sheriff, Clerk, Bailiff, or other Ministers) failing to deliver or present any such Indictment to the Justices of Peace at such Sessions of the Peace as aforesaid, to forfeit forty pound.

1 E. 4. 44.

Fit. Torn. 3.  
Br. Presentments.

*Leur Indite-  
ments seras de-  
liver al Justices.*

A Trespas presented in the Sheriffs Tourn, the Sheriff ought to certify the same Presentment to the next Sessions of the Peace, and there the Justices of Peace are to assess the Fine. Crompt. 159.

*Les Justices  
erier' loffendor.*

And the Justices of Peace are to award Process, upon all such Indictments and Presentments, and to try, arraign, and deliver the Offenders, and not the Sheriff, &c. and also the said Justices of Peace, shall have power to set such Fine upon every Person indicted or presented (in the Sheriffs Tourn) of or for any Trespas, as it shall seem good to them in their discretions; and the Estreats of the same Fines and Amerciaments shall be inrolled, and by Indenture delivered to the said Sheriff, Under-Sheriff, or their Clerks, or Ministers, to the use and profit of him that was Sheriff of the said County, at the time of the taking of such Indictments or Presentments: And if any Under-Sheriff, Clerk, Bailiff, or Minister, shall cause any Person to be attached, arrested, or put in prison, or shall cause to be taken any fine, or ransom, or levy any ameracements of any person so indicted or presented, by colour of any such Indictment or Presentment (before him or them) taken at their Tourn; before they have Process from the said Justice of Peace, or Estreats delivered out of the said Indictments or Presentments (so delivered to the Justice of Peace) the Sheriff so offending shall forfeit 100 l. the one half to the King, &c. and the other half to the Party thereby indamaged.

*Et estreater' le  
fines, &c.*

*Al use le Vic.*

But

1 Ed. 4. ca. 2.

But this Statute extends not to Indictments taken before the Sheriffs of London in the said City; nor to any Person having the Grant of Fines or Amercements by any Letters Patents of the King, &c. nor to any Person having any Liberties or Franchises by any Letters Patents, or in any other manner by Prescription.

Br. Present-  
ment 16.  
Fit. Torn. 3.  
4 Ed. 4. 31.  
8 E. 4. 5.

Neither doth this Statute give Authority to the Justices of Peace, to award Process upon all Indictments taken in the Sheriffs Tourn when they be brought and delivered them; but only of such Indictments as shall be lawful and sufficient, and such as contain matter whereof the Sheriff hath Jurisdiction in his Tourn, and power to make enquiry by the Common Law, or by Statute; for if the Sheriff in his Tourn shall make enquiry of Liberties given contrary to the Statute of Liberties, or will enquire of the Statute of Labours, or Indict one who did feloniously ravish a Woman, or such like, which be not inquirable in the Sheriffs Tourn, though such Indictments be by him brought and delivered to the Justices of Peace, according to the said Statute made 1 Ed. 4. yet they ought not to award Process thereupon for that they were taken coram non iudice, and so void. Co. 5. 112. & 9. 26.

Also if the Sheriff, &c. shall not deliver their Indictments and Presentments (found and taken in their Tourns) to the Justices of Peace of the same County at their next Sessions, according to the aforesaid Statute made 1 Ed. 4. then such Indictments, &c. not so delivered, &c. are void. Vide Fitz. tit. Torne de Vic. 6.

28 E. 3. c. 9.  
Stamf. 34.

So then (at this day) Sheriffs shall make no inquiries, nor take any Indictments of Felony, by virtue of any Writ or Commissions procured at their own suit; nor elsewhere, but in their Tourns.

But in their Tourns Sheriffs at this Day may make Inquiries, and take Indictments of Felony, Virtute Officii: Wherein notwithstanding they must demean themselves according to the aforesaid Stat. Stamf. 34. And Sheriffs shall hold their Tourns and take Indictments, but in convenient and usual times, and places accustomed: And they shall take their Indictments by the Oath of twelve Men at the least; and by Roll indented (i. e. those Indictments or Presentments must be inrolled) and sealed between the Sheriff and the Jurors; and they shall take their Indictments by Pen of good Name and Credit, (legales homines) and sufficient of Estate, as appeareth here before.

Fitz. 92. c.

And yet if any Man having the King's Protection, another shall take his Goods, or shall enter into his Lands, &c. or shall beat his servants, &c. he may have a special Writ or Commission to the Sheriff (of that County) to make enquiry thereof, and to certify the same before the King, &c. and thereupon Process shall be made out against them (in the King's Name) by Venire facias: As upon an Indictment, and that they shall be fined therefore.

Register 153,  
154.

So if any Bridge, or Wall, Cause, or Sewer shall be broken to the Annoyance of the Country, it appeareth by the Register, that the King may send his Commission or Writ to the Sheriff, to inquire who ought to make such Bridge, &c. and to distrain them to repair it, &c.

28 E. 3. c. 9.  
42 E. 3. c. 4.

And altho' by the former Statutes of 28 E. 3. c. 9. & 42 E. 3. it was ordained, that no Commission or Writ should be thenceforth granted to the Sheriff to make any Inquiry, &c. yet if the King shall grant out such a Commission or Writ to the Sheriff, quære, if it be not good; it seemeth to Paster, Fitz. 92. c. that it is not good, for that this Statute bindeth the King that he cannot now grant out such a Commission to the Sheriff; and yet Inquests of Office may be taken by the Sheriff as in Wast, Redisseisin, &c. See hic cap.

## C A P. CVIII.

The Power and Authority of the Sheriff, in, or by reason of his Torne.

**B**y the Common Law, (befoze the Stat. of Magn. Charta) the Sheriff in his Torne (as also the Steward in a Let) might have Arraigned one who had been Indicted befoze them of Felony (and so might the Coroners also upon an Indictment Sup. visum Corporis) Finch. 125. but now by the said Stat. of Magn. Charta, cap. 17. It is ordained, that no Sheriff, Constable, Escheator, Coroner, or other Bailiff of the King, shall hold Pleas of the Crown: And therefore the Sheriff in his Torne cannot now hold Plea of any Felony, or other thing pertaining to the King's Crown; nor of any thing touching any Lands, nor of Debt, Trespas, or other Matter whatsoever. Mag. Chart. 17.

But this Court, and the Authority of the Sheriff therein, is only or principally for the good ordering and government of the County, by taking view of the Suters, and Inquiry and Presents of Offences committed therein against the Peace, and of other common Rulances and Grievances within the County.

But the further proceeding upon such Inquiry, Presentments, and Indictments made and taken befoze the Sheriffs in their Torns, belongeth now to the Justices of Peace, &c. as aforesaid, by force of the Stat. of 1 E. 4. c. 2. befoze recited.

And yet note, that the Sheriffs Torne is a Court of Record (in all things that pertain to the Torne) and the Sheriff therein is a Judge of Record, and hath Authority (in some Cases) to imprison Offenders, to assess Fines upon them, and to take Recognisances: As Fitz. 82.  
Br. Leet 39.

The Sheriff in his Torne (or his Steward there) may commit him or them to Ward, that shall make an Affray in their presence, whilst they be in Execution of their Office: And may also by Recognisance bind such Offenders to the Peace; and may commit them to Ward until they have found Sureties for the Peace; and all this he may do notwithstanding the said Stat. of 1 E. 4.

Also the Sheriff in his Torne, or his Steward there, may command the meet help, and aid of others, to arrest such Affrayors.

If any other contempt or disturbance to this Court shall be committed in the said Court, befoze the Sheriff (or Steward there) they may impose upon such Offenders a reasonable Fine. De Br. Leet 14. 36.

The Sheriff in his Torne (or his Steward there) may take the Examination of Felons, and may commit them to the Gaol; and may also take the Presentment of any Felony at the Common Law, committed within their Precinct, as you may see here befoze. Co. 8. 38.

In former times the High Constables of every Hundred, and the Petty Constables of every Town, were chosen and appointed by the Sheriff of the said Shire, yearly in the Torne, and there these Constables received their Oath. And at this day they may still be appointed or chosen, and sworn in the Sheriffs Torne befoze the Sheriff, or his Steward, as well as in the Leet.

In the Leet, or Sheriffs Torne, if one that oweth Sute thereto, will not be sworn, &c. he shall be fined and imprisoned, (by the Sheriff or Steward there) until he hath paid such his Fine: Or he may be amerced, and be distrained for such Amerciament, by his Goods, in any place within the County. Fitz. Leet 11.

And

And so if any that oweth suit there shall make default of appearance, he may be amerced by the Sheriff, and distrained for the same amercement, as before. Fitz. Avowry 194.

But if any Lord hath the view of Frankpledge of all his Tenants of his Mannor, which is within the Hundred, those Tenants are not compellable to appear at the Sheriffs Torne. For the Torne, and the Let (or View of Frankpledge) are all one Court. And when it is in the King's hands, it is called the Sheriffs Torne; and when it is in the hands of any other person of the King's grant, (or otherwise) it is called the View of Frankpledge, or Let, or Law-day.

Co. 8. 38.

So if a suitor, being sworn of the Jury there, shall refuse to make presentment there: or if a Juror there shall depart without giving up their verdict, the Sheriff (or Steward) may impose a reasonable fine upon such offenders.

Ibid.

So if the Sheriffs, Bailiffs, or other Officers belonging to this Court, shall refuse in Court, to execute their Office, they may be fined as aforesaid; And so in other like cases happening in this Court before the Sheriff, he being Judge therein.

Cromp. 210. a.

Upon a presentment of a Rulance in the Sheriffs Torne, the offender may be amerced there by the Sheriff, and the Sheriff may distrain for such amerancements, throughout all his County, by the Book 2 H. 4. f. 24. Br. Leet 41. & 8 R. 2. Fitz. Avowry 194. But now it seemeth that such presentment must be delivered to the Justices of Peace, who are to try the offenders, &c. and to fine him, and then to extreat the same, before the Sheriff may levy or take any fine or amercement for such Rulance: See the former statute 1 E. 4. cap. 2. And yet by the Book of 8 Ed. 4. If a presentment of a bloodshed, &c. shall be lawfully made in the Sheriffs Torne, the Sheriff hath power to amerce him that is found guilty, and the offender shall make his fine there (as it seemeth) and shall not be put to answer the same before the Justices of Peace, &c. Note, that this case was so adjudged after the making of the former Stat. 1 E. 4. & quare inde.

8 E. 4. 5. Tit. Torn. 4.

Or else the King may have a Distringas, to levy such a fine or amerement, or the like, by Distress and sale of the Offenders goods. Finch 125.

If a Purpresture be presented in the Sheriffs Torne, the Sheriff may reform and pull down the same Cromp. 212. a.

21 Jac. 21.

By the Stat. made 21 Ja. c. 21. If any Inholder or Hosteler shall make any bozlethead contrary to the statute, or which is not sufficient, lawful, and of due assise, or shall sell their provender or victuals at unreasonable prices, and that the offence be presented in the Sheriffs Torne, the Sheriff thereupon may determine the same, &c. may assess a reasonable fine upon the offenders, and may make out proces against them, and being taken may commit them to prison, until they have paid their said fine.

And for the second offence the Sheriff may imprison the said offender, by the space of one month, without bail; And for the third offence may cause him to be set upon the Pillory, without any redemption of money. Vide Stat. 21 Jac. cap. 21 hic cap. 107.

Also by the Stat. made 13 R. 2. cap. 8. Sheriffs, (and all others which have the Assise of Bread and Ale to keep, and the correction of the same) shall take no amercement or fine, but shall adjudge the offenders to that bodily punishment which the offence requireth (&c. to the Pillory in some cases,) and shall do execution there upon presentment of the offence. See hic cap. 4.

Also by the Stat. made an. 13 E. 1. c. 13. such malefactors, in felony,  
f f f o

or trespass as were duly indicted and found culpable in the Sheriffs Torne, the Sheriff might have apprehended and imprisoned them, &c. and the apprehending, arresting, and imprisoning of felons, being an authority given to the Sheriff by the Common Law, seemeth not to be restrained, by the intent and meaning of the said Statute made 1 Ed. 4.

But for that it was found to be a great trouble for the people to travel to the Sheriffs Torne, Therefore Court-Lets were granted to redress all manner of defaults there : And if the Let redressed them not, then those defaults were to be presented in the Sheriffs Torne. 12 H. 7. fol. 18.

And this Court (the Sheriffs Torne) is now almost grown out of use, the reason whereof *W. Wilkenfon* observeth to be, That Sheriffs have used to sell, both their Under-Sheriffwicks, and Bailiwicks, to men of mean estate, that regard not the good of the Commonwealth, but altogether their own private gain and profit ; whereby the King is many times much wronged and deceived (between the Undersheriff, and Bailiffs) of all his Waifs, Estrays, felons goods, and other profits, which are things inquirable in the Sheriffs Torne, and which are taken up by the Bailiffs, and never accounted for, which thing as it may touch the Sheriff in his credit and reputation, so in his Dath : For when he entreteth into his account for the payment of the King's debts, he is then sworn to answer and account for all waifs, strays, felons goods, debts, perquisites and profits which seldom or never, either the King, nor yet the High-Sheriff knows of, because these ancient Courts are not kept as they ought to be.

Divers other reasons (as I conceive) may be given, why the Sheriffs Torne is now grown so much out of use :

1. First, for that all (or the most part of) the business, or things inquirable in the Torne, or there to be dealt withall, are now usually and frequently enquired of, presented, heard and determined by and before the Judges of Gaol-delivery, &c. in their Circuits ; And also before the Justices of Peace at the Quarter-Sessions ; and again are presented, and many of them punished, in the Court-Lets of every Lord, &c.

2. Next, the small number of Suiters now (at this day) compellable to appear at the Sheriffs Torne, by reason that there are almost in every Town, one or more Lets granted by the Kings of this Realm, in which Lets they do Enquire of, and redress the Common Rulances, Trespasses, and Grievances, done within the Precincts of the same Lets, &c. And besides such as before were Suiters to the Sheriffs Torne, are now become Suiters to the Let where they dwell, in regard of their Resiance, and then no man is compellable to appear at two Lets, or Courts of one and the same nature, and only for his Resiance.

3. Thirdly, the trouble of the Country people, to travel from all parts of the Hundred, to the Sheriffs Torne ; whereas now they perform the same service, to the King and their Country, at home in their Let.

4. Again, the trouble and charge of the Sheriffs, in keeping this Court, and making his their perambulations into every Hundred, and that twice in every year.

5. And again for that divers Rights, profits, and advantages are now taken away from the Sheriffs, which anciently did belong unto them, or which anciently they at the least had and enjoyed, by reason of the Torne, (whereof in part see hic cap. 14. & 124.)

1. For the first true it is, that for the expedition of Justice in the Country

Country, and for the ease of the people, these Judges, and Justices, and the Court Leets, have had their beginnings and authority given them of later times: But withall we may observe in our daily experience, that notwithstanding the great care of the Reverend Judges, and Justices of Oyer and Termin. in their Circuits, and of the Justices of Peace in their Sessions, as also of the Lords in the Leets, for the discovery and redressing of the common grievances of the Country, yet for the most part they have little usually presented before them, but *Omnia bene*, except where any particular person will and do prefer and follow the cause against the offenders.

2. For the second, true also it is, that at the special requests and suite of divers Lords of Franchises, or of Mannors, and for the ease of their Tenants and Neighbours, Leets have been granted by Kings, within several Precincts, to the intent to redress all *Disances*, trespasses and grievances, or other defaults there, which the Torne, was to enquire of and to redress; and that the Sheriffs Torne, and the Leet are all but as one Court, and that no man is compellable to appear, &c. at the two Courts, only for his Resiency: And that there are now in every Town almost, one or more Leets, whereto all (or the most part of) the Inhabitants are become suitors, so as there cannot now be so many suitors to the Sheriffs Torne (by a great number) as anciently there have been: But withall we see many of these Leets are now much neglected, and sometimes not kept in many years together, in which case such as be Resiant within such Leets, may be compelled to come to the Sheriffs Tournes, which shall be holden within that Hundred (where such Leet ought to have been kept) during such times of neglect of the Leet: And again where the Leet of any Lord hath been, or shall be, seized into the King's hands for any misuser, or other cause, all the people Resiant within that Leet so seized, shall now be compellable to appear, &c. at the Sheriffs Torne. Finch. 132. a.

3. For the trouble of the Country people, Surely, if they duly performed their service in this behalf at home in their Leets, it were well; but that is by common experience found to be otherwise: And for their travel twice a year at the most, to the Sheriffs Torne being always within the Hundred wherein they be dwelling, it is far less labour or trouble to them, than their going to their Assises, or Sessions of the Peace; And besides, this their service if it were well performed at the Sheriffs Torne, it would much ease, and expedite the business of, the Judges, and Justices, yea and of the Country people themselves, at their Assises, and Sessions of the Peace.

But for the trouble and charge of the Sheriffs in keeping this their Court, as also for the profits thereof, which be now taken away from them, perhaps some Sheriffs may regard more their private gain than the common good and weal of the Country, (which also is now grown to be the common cause almost in all other men, aswell Officers as others) But yet it cannot be denied, that of Reward and Punishment (as one saith) all Commonwealths do consist, and that the care of Equity and Justice wares cold, unless there be reward ready for virtue; And therefore though all Sheriffs be, or ought to be men of the best sufficiency in their Country, and such as need no reward for their care, diligence, travel, and charges, in that behalf, yet often times (now of late years) the charge and burthen thereof lieth upon men of no great Estate, yea upon such as find it overburthensome to them in regard of the charge: And besides, be they of the best and ablest sort, yet they must of Necessity employ under them inferior Officers and Ministers, sc. their Under Sheriffs, and others, who with more chearfulness and

care (yea and moze honesty, and conscience) would (in all likelihood) proceed in their affairs, when they shall find due recompence or reward yielded them for their trabel and pains.

And as it cannot be denied, but that the Sheriffs making and keeping orderly these their Circuits, Courtes, or Toznes, though every Hundred within their Countries, twice every year, may not only themselves in their trabel espy, and by their care enquire and learn out, but also may redress many grievances, common wrongs and injuries committed or done within their County, which now never come to publick light; So on the other side it is evident, that not only divers profits and avayls which anciently were belonging to the Sheriffs (and yielded to them as a Recompence or Reward towards their great charges by them in this their office sustained, as well in the Execution of this their Office, as upon their Accompts) are now taken away from them; But also that the charges of passing their Accounts, and their dangers otherwise, are grown so exceeding great, as that many, (yea of late most men) seek what they can, to avoid and keep themselves from the place.

## C A P. CIX.

## The County Court, or Shire Court.

*Incident al  
offic del Vic'.*

**T**he County Court (as well as the Sheriffs Tozne) hath of ancient time been belonging to the Sheriff; And is incident and belonging to the Office of the Sheriff, and not to be severed nor granted away from it; nay the King by his Letters patents cannot grant away the Office of the Clerk of the County Court, nor the fees, &c. thereto belonging; and if whilst the Office or place of the Sheriff remains void, the King (by his Letters patents under the great seal) shall grant, away the said Office of the Clerk of the County (or Shire Clerk of the County) or shall appoint any to occupy or use the same: Yet when the King shall afterwards make one Sheriff, he shall avoid that grant for that the County Court, and the entering of all the proceedings therein, are incident to the Office of the Sheriff, and the Sheriff is to appoint such Clerks under him in his County Court for whom he will answer at his peril.

Co. 4. 33.  
Co. L. 168.

Sir Edw. Coke super Litl. fol. 168. saith, that the Sheriff in the time of the Romans, and before was a Minister to the King's Court of Law and Justice, And had then a Court of his own, which was the County Court, then called Curia Consularis, &c. And that That which we call Comitatum, the Romans moze latinely called Consularium. And that whom the Saxons afterwards called Shireve, the Romans called Consul, &c.

Nam Comitatus est locus publicus in quo Vicecomes uniuscujusque Provinciae jurisdictionem suam exercet. Hoc autem nomen inde sumpsit Originem, quod apud majores nostros Nobiles illi quos Comites dicimus, istis Provinciis a Rege præstiebant, & jurisdictionem in eisdem Exercebant. Dr. Cow. Int.

The Book called Speculum Justiciar. Libro 1. cap. 15. des Courts treating of the Sheriff's Court saith thus; L'un Court tenent les Viscounts de mois en mois, ou de Cinq; Semajns in Cinque, selon les greindure & larges de pais. Et ceux Courts sont appelle Counties, ou les Judgments se font per les Suitors, si brief nemy soit, Et ceo est per garaunt de

*de Jurisdiction Ordinary. And a little after he saith, En les quels Courts ils ont Conusans de Dets, Covenants enfreints, & trespasses, & tiels autres petits peches que ne passa my 40s. in value.*

9 H. 3. c. 35. But now these County Courts (called also the Shire Courts) shall *The Times.*  
 2 E. 6. c. 23. be holden and kept from month to month: And shall be no longer deferred, but one month from Court to Court, and so the said Courts are to be kept every month, upon a day certain, and none otherwise: And so within the twelve Shires of Wales, their Sheriffs shall keep their Counties monthly: And so within the County Palatine of Chester.  
 34 H. 8. 26. 33 H. 8. cap. 13.

The necessity of keeping this Court every month, and upon a day certain, is by reason of the King's Writs of Exigent which must be proclaimed or read there.

Process of Writ, sc. the Exigent is to be directed to the Sheriff in this Court; And (in this County Court) the Sheriff (upon the Exigent) doth proclaim, or call the parties (sued in Courts above) to render their bodies, &c. Or else to be outlawed, and out of the King's Protection, &c. *Terms de ley.*

And the Coroners are to sit with the Sheriff, at every County Court, there to give their Judgments upon Writs, &c.

Note that in London the Judgment upon Writs is given by the Recorder. Co. L. 288. 8.

*Si un Exigent soit agarde & retourne deins cie tardy temps, que les Countes ne poient estre tenus, sil soit ulage sur ceo, il est Error.*

*Et quant le Roy voet estre certifie de ulagar. que est in le County, donne Certiorare serra direct cybien al Coroners de County, come al Vic. de certifier ceo. Fitz. 245. 9. Finch. 116.*

And as to these matters the County Court is a Court of Record. Finch. 116.

By the Common Law these County Courts may be kept or holden at any place, at the pleasure of the Sheriff, or Under-Sheriff, so that it be within the County. And to this Court every man within the County may resort, to have knowledge of the Law, and to have justice there ministered to him. *The Place.*

But the Sheriff of Northumberland (by the Statute made Anno 2 E. 6. cap. 25.) is to keep the County Court of that Shire, in the Town or Castle of Alnewike, and none other place.

And the Sheriff of Suffex (by the Statute made Anno 19 H. 7. c. 24.) is to keep and hold the Shire Court for that Shire, one time at Chichester, and the other time at the Borough of Lewes, and so to be kept *Alternis vicibus*, for ever: And every Shire Court there holden to the contrary, and all things therein done shall be void. Vide Dyer 135. Pl. 14.

33 H. 8. c. 26. And the Sheriff of the County of Chester, is to keep his Shire Court, in the Shire Hall of the said County.

27 H. 8. c. 13. And the Sheriffs Shire Courts in Wales, of the County of Brecknock, shall be holden at Brecknock: of Radnor at new Radnor, and Preston; of Mountgomery, at Mountgomery and Maghenleth; of Denbigh, at Wrexham; and of Monmouth, at Monmouth, and Newport; *Alternis vicibus.*

If the Sheriff shall give false judgment without the assent of the Justices, the party shall not have his Writ of false judgment, but must have his remedy against the Sheriff by bill, &c. Fitz. Bill. 12. 26 Aff. p. 45. N. br. 17.

The

The County Court is the Sheriffs Court, and the entry of all the pleas and proceedings there, are incident to the Office of the Sheriff, and cannot be granted or severed from the same; And the Sheriff is to appoint Clerks under him in this Court, such as he will answer for at his peril. Co. 4. 33. & 6. 11.

And note, that every County or Shire is as it were an Entire body of it self, and entirely governed by one Sheriff under the King, and therefore to this County Court all the inhabitants dwelling or abiding within the County or Shire do owe lute by reason of their Resiency there; And lute to this County Court is called lute Real (and not lute service) and for default of this lute the party shall be amerced, and not distrained, &c. Finch. 115, 116. & Fitz. 71. d. that it is the King's Court

And yet a man may hold Lands to do lute service to the County Court. Fitz. 158. a.

But for that at the Common Law, the Sheriffs used to make Proclamation in the Church or Parkets, what day they would hold this their Court, and if any luter came not at the day appointed, they would amerce him, &c. for to remedy this, the Stat. of Merton, c. 10. first ordained that every free man might make his Attorney to do lute at this Court; and for the better redress of this former mischief, presently after, the Stat. of Marlebr. c. 18. ordained, that none should amerce any man for default of common summons, but only the chief Justices, or the Justices in Cire in their Circuits: so that at this day no luter shall be amerced in the County Court for default of appearance, if there be a sufficient number to pass upon all the issues and matters before them depending; and it seemeth also that they ought to be specially warned (by the Bailiff) to appear, &c. otherwise they shall not be Amerced. Lectur.

*Nec ascun serra Amerce ne distrein d'estre d'ascun Enquest si la soient assets en mesme le pannel, &c.*

The Officer in this County Court is one of the Bayliffs. Finch. 116.

Also in these County Courts (which are in manner as Courts Baron) the Sheriff is no Judge, but a Spinister. 6 E. 3. Br. Court Baron 11, 12, 19. Finch. 117.

Neither is the Steward Judge there, 39 H. 6. fol. 5. Br. Judges 15. And yet in ancient times the Sheriff and Coroners have been, and still are Judges in the County Court, in pleas which touch the Crown. Abr. d' Ass. 68. Finch. 115. & hic cap. 4. & 5. As also in Crigents.

But (now at this day) as to all Actions and Proceedings by a Justices, or Writ, As also in other lutes between party and party, which are there by plaint without Writ, the Freeholders of the County or Suters are Judges there: And as to Outlawries, the Coroners are only Judges, &c. the Coroners are only Judges there to give Judgment upon the King's Writs of Crigents (i. e. if the party cometh not in upon the 5. Proclamation (or at the 5. County) then the Coroners shall give Judgment that he shall be out of the King's Protection, &c.) and yet if they be Freeholders (as by Law they ought to be) they are also Judges in all actions there sued. See 6 E. 4. 3. 7 E. 4. 23. 39 H. 6. 5. & 26 Ass. pl. 45. Br. Court Baron 11, 12, 19. & Justices 3, 6.

And although the Suters be Judges there, yet all the judgments there shall be pronounced by the Sheriff, upon actions or lutes there: And see Co. libro 9. Preface. Those Courts are called Counties where the judgments are given by the luters, if there be no Writ; so that where the lutes in this Court are by plaint without Writ, the Freeholders or Suters are to give judgment (i. e. to find the party guilty, or not guilty, &c.) and the Sheriff is thereupon to pronounce the judgment; but yet if the lute be by Writ, there the Suters also are Judges. Finch. 117.

But

But Sheriffs shall not pronounce any judgment, nor suffer any to be pronounced in their County Court, unless they be thereunto required by all the Justices which shall be at the Court, Stat. Westm. 1. Cap. 32. quere of the use herein.

Neither can the Sheriff (in their County Court) do any act without the assent of the Freeholders or Justices (for that it is but a Court Baron) and if the Sheriff shall do any thing there without the Justices, an action of the case lieth against the Sheriff, quare tamen.

Where a Writ de Nativo habendo, shall go to the Sheriff to hold a plea of a matter, there he is (by some opinions) both a Judge, and an Officer: but where the Nativo habendo is directed to him, returnable in Banco, there the Sheriff is an Officer, and no Judge, 11 H. 4. Br. Off. 36. But quere, For in a Justices the Writ is quod Justices, T. &c. And notwithstanding that the Writ be directed to the Sheriff (to hold plea of the matter) and not to the Justices, yet the Justices are Judges: And yet the Justices is a Commission to the Sheriff to hold plea, as well as the Writ de Nativo habendo, Br. faux imprisonment 30.

But the reason why the Writ is directed to the Sheriff, is, for that the County Court is the Sheriffs Court, and therefore great reason that the Writ should be directed to him, to whom by Law the Court appertaineth; To the intent that he should see two things performed there, sc. First to hold his Court, that justice and right may therein be done to the parties; secondly, that he may be answered of those profits of his Court which appertain unto him: but yet when he holdeth plea by force of the Kings Writ, this doth not change the nature, nor the jurisdiction of the Court; For the Kings Writ cannot alter the jurisdiction of any Court Baron, County Court, or Hundred, &c. to make them Courts of Record, all which are mean, or base Courts by the Common Law, and have Judges authorized and appointed in them by the Law, And therefore all things determined in these Courts ought to be determined by the Judges of the same Courts, sc. by the Justices only.

Also see the Book 2 H. 4. 24. That the Sheriff cannot justify to arrest or imprison one by a Writ de Nativo habendo, or by a Justices, for those Writs are but commissions to hold plea, and the Sheriffs Court by these Writs is not become a Court of Record, Br. Faux. impris. 30.

By the Statute 3 Ed. 1. c. 32. No Sheriff shall suffer any Barristers, nor any Stewards of great Lords, nor other (unless he be Attorney for his Lord, or Master,) to make sute, or to maintain any Actions, or quarrels; Nor to give judgments in their County Courts; Nor to pronounce the judgments if he be not specially thereunto required, and prayed of all the Justices, and Attorneys of the Justices which shall be at Court: And if any do, the King shall punish grievously both the Sheriff, and him that so doth. See hic antea fol.

Any person may make a general Attorney, to sue for him to them in all pleas, moved for them or against them, in the County Court before the Sheriff, or in any Court Baron, &c. See Stat. 13 E. 1. c. 10. & Nat. bre. 19, 20.

Westm. 1. 32.  
See Co. 8. 36.  
W. 27.

11 H. 7. c. 15.

Nota, que al Common Ley (devant le stat. de Gloc. 6 Ed. 1. cap. 8.) le defendant in action de trespass ne pouvoit aver fait Attorney de appear pur lui, &c. le reason fait, pur ceo que s'ils fuer' convicts de trespass, & fuer' present, ils fuer' maintenant mise al Gaols, tanque ils ont fait fine al Roy, & gree al party; mes ore per cel stat. de Gloc. ils poent fair Attorneys in cases de trespass, & s'ils soient atteint de trespass in leur absence, soit mande al Vic. un Capias de prender le party (sc. le def.) ad faciendum finem

finem cum Rege ; Et dunque le Vic. ne deliver eux, tanque ils ont fait fine al Roy, & gree al party : Sed si soit present.

Auxi per le Common Ley (quant ascun est command per brief le Roy de-appeare, &c.) les parties pls. & def. tenant & demandant al primer appeare in proper person in chescun Court, & nemy per Atturney ; mes apres que il ad un foits appeare, les Courts le Roy al Westm. & tous auters Judges que tient ple per brief, poent admit luy per Atturney, auterment quant plea fuit tenus sans brief, &c. Finch. 63. Co. L. 128.

Mes ore per le dit stat. de Westm. 2. cap. 10. fait Anno 13 E. 1. est ordein que chescun person poet faire un general Atturney, de suer pur eux in tous ples, move pur, ou vers eux, &c. devant les Justices al Westm. ou in Bank le Roy, ou devant les Justices in lour Circuits, &c.

Uncore in Causis Criminalibus le personal appearance des parties est requise pur le hainousness del offence (come in Appeals de Murder, de Robbery, de Rape, ou le mayhem) Et pur ceo in ceux cas nul Atturney serra receivre ; Ne auxi in nul matter de Corone, ne in ascun Indictment. Vide le dit stat. de Gloc. cap. 8.

Auxi in ascun ples queux sont Civil, home ne poet faire Atturney, Come in quid Juris Clamat. in Cessavit, Capias ad Computandum, &c.

Auxi enfant ne poit faire Atturney, mes Gardian, ou prochein Amy. N. br. 20.

Auxi home utlage ne poet appeare per Atturney, come fuit tenus. M. 37 El.

Mes le Roy poet Licens ascun person a fair Atturney in ascun action quicunq; Fitz. 25. c. & Finch. 63.

Auxi Nota, que brief de Attornato fac. non datur per Statutum, in visu Franciplegii, Nec in Turno vicecomitis. Vide Register. 172.

Also it appeareth by the Stat. of Westm. 2. cap. 36. that Sheriffs in their County Courts, or their Officers, have formerly solicited and procured suits in their Courts against poor men, procuring other persons to bring against them Writs, and Plaints of account, Debt, Detinue, Trespasse, and the like, by which means they compelled the poor men to follow or resort to their Counties, until they made fines with the said Sheriffs at their wills, for remedy whereof that Stat. provideth, that if any Sheriff, Bailiff, or other, be lawfully convicted thereupon, they shall make a fine to the King, and besides shall yield treble damages to the party grieved. Et le dit Stat. voet ouster. Si quis per hujusmodi falsas querimonias fuerit attachatus, replegiat districtionem suam sic captam, Et poni faciat Loquelam coram Justiciariis, &c. sc. quant un est attache in tiel manner, il avera un Repleg. & remover le plee devant les Justices al Westm., hors del County Court ; Et si le Vic. ou Bailiff, que attache le party in cest manner, vient & avowa le prisel per force d'un Pleint (sue devant luy per un tiel envers le plt.) de Det, Detinue, ou Trespasse, &c. (come le case est) dunque ceo stat. done al plt. un Awerment, sc. adire que le pleint fuit move envers lui malitiose per procurement & abetment del Vic. ou auter def. le quel il voet Awer, & preia ses Damages. Et si ceo soit trouve, le plt. recovera ses treble damages, & le def. ouster al prison, & fera fine al Roy, &c.

Et nota, que cestuy que est attache in tiel manner, poet aver un Repleg. (ut supra) Ou brief de Trespasse ; mes sil port brief de Trespasse, la il recovera forsque single damages. Et le def. ne serra fine.

Issint si le plt. ne remove le plea hors del County Court, nient obstant que le def. soit atteint in le County, il navera le punishment done per ceo stat.

Mes si un vient al Vic. &c. & dit que un tiel ad fait a lui trespass, ou doit a luy un certain some de argent, & preia que il poet aver un pleint devant luy envers l'auter, Et le Vic. &c. dit que sil voet suer devant luy, il avera come le Ley voet, Et sur ceo l'auter enter un pleint devant luy envers son adversary, ou destor, per force de quel le def. est attache, la sil voet suer come

ceo

ceo stat. voile, & le case monstre, il recouera rien, Car ceo fuit primerment move per cestuy, que suist; Et le stat. ne parle mes lou le pleint fuit move primerment per procurement del Vic. &c. Vide 41 E. 3. Fitz. Avowry, 78. & 9 E. 4. fol. 23.

Again it appeareth by the Stat. 11 H. 7. cap. 15. that after wards Sheriffs or their Officers in their County Court, did often practise divers other misdemeanours, by entring Plaints there subtilly and untruly (of Det. Covenant, Trespass, and the like) unknowing to the plaintiffs (or persons in whose names the same plaints were entred, yea sometimes the same persons being dead) and only to the intent to extort from the defendants money at every of the said Courts (depending the said plaints) for their defaults of appearance there, and where the Def. were never summoned nor warned to the said Courts, nor ever had knowledge of any such suit or plaint depending against them; and also by using other notable extortions; For remedy whereof the said Stat. of 11. H. 7. hath provided as followeth.

11 H. 7. c. 15. The Sheriff, Under-Sheriff, or Shire-Clerke, nor any other person in their name, nor by their commandment, shall enter any plaints into their Books, (in their County Court) in any mans name, unless the party Plaintiff be in his proper person present in the Court; Or else by sufficient Attorney or Deputy that is known to be of good name and disposition; And the Plaintiff shall find pledges to pursue his plaint, being such persons as are known in that County: And also the plaintiff shall have but one plaint for one trespass, contract, or cause: And if the Sheriff, (Under-Sheriff, or Shire-Clerk) shall enter or cause to be entred any more plaints than the Plaintiff supposeth that he hath cause of action for against the Defendant, then the Sheriff, Under-Sheriff, or Clerk, that doth enter or cause to be entred any such plaints contrary to this Statute, shall forfeit for every default forty shillings, one half to the King, the other half to him that will sue and prove the same, by action of debt, or information, &c.

After such plaints entred (in the County Court) against the Defendant, the Sheriff (Under-Sheriff, or Shire-Clerk) shall make sufficient Precepts, directed to the Bailiffs of the said Hundred, to attach (summon or warn) the Defendant to appear and answer to the said plaints; And if there shall be any default in the said Bailiffs of the Hundred, in not warning of the Defendant to appear, or in other executing of their said office (against any Defendant in the Sheriffs Court, according to the tenor of their Precept) then the said Bailiffs shall forfeit for every default forty shillings to the King, and to be convicted thereof by the examination of any Justice of Peace, upon complaint thereof to them made by the party grieved; Or else the party grieved may sue in the Exchequer, &c. by Action of Debt, or Information, and there for every such default proved against the Sheriff, &c. the said Sheriff or other Officer shall forfeit forty shillings, the one half to the King, the other half to the party grieved.

Also the said Sheriff (Under-Sheriff, Shire-Clerk, nor their Deputies) shall make no Estreats to levy the said Sheriffs amerciaments (or Shire amerciaments) until that two Justices of Peace (whereof one to be of the Quorum) have had the oversight of their Books, and that the Estreats be indented between the said Justices of Peace and the said Sheriff and Under-Sheriff, and sealed with their seals; the one part to remain with the said Justices, and the other part with the Sheriff or Under-Sheriff, to the intent they may understand, if there be any deceit or untrue demeaning in them, in making of their Books.

*The Bailiffs  
shall be sworn.*

Also those persons which shall be gatherers of the same ameracements Ibid.  
(as Bailiffs or other Officers) shall be sworn by the said Justices of  
Peace, that they shall gather or take no more money than is forfeited,  
and contained in the Cestreates, sealed with the seals of the said Justices  
of Peace upon the pain aforesaid; the same gatherers to be convicted  
by examination of the said Justices of Peace, or one them, as before  
is rehearsed: see my Countrey Justice, tit. Sheriffs

C A P. CX.

Of what matters or causes, the Sheriff may hold  
Plea in his County Court.

Sciendum est quod omnia placita, sunt vel Placita.

Realia, sc. de terris, &c. in que homo recovera ascun  
 realty. Litt. 500. & 492.  
 Personalia, sc. de Debitis, transgressionibus, & tiels  
 de ceux tantum le Vic. tener plea, per plaint.  
 Mixta, que utraque tangunt materias; sicome Af-  
 fise, & action de Wast. Littl. 491.

*Actions Reals* { *Possessory.*  
*sont deux.* { *Ancestral.*

Placita personalia  
sunt de 3. fortis.

Transgressio facta contra Coronam Regiam; Et hæc tangit vitam, vel membrum.

Transgressio facta contra pacem Regiam; sicut de verberatione, de clauso fracto, de arboribus succisis, de bonis asportatis, & similibus.

Aut est de injusta Detentione Catallorum, replegiare, de debitis, & similibus.

*Plees personnels* poent auxi diuide en deux sorts ;

*L'un est meer personal plea. en que nul ad interest mes mesme les parties (sc. le plt. & de def.) sicome actions de Dett, Detinue, &c.  
L'autre est mixt en le Corone ; sc. lou le plt. & le def. n'ont sole interest in l'action. Mes Roy ad interest in ceo auxi, pur aver fine ; Come in action de Trespass quare vi & armis, &c. ceo est action mixt, &c. Et le Vic. ne doit tener plea, &c.*

*Amxi tous Offences poient estre divide in deux sorts* } Private.  
Publique.

*Private Offences sont tiels que sont fait per un home al damage del auter; Et ceux sont remedy per Original brief, Bill, ou pleint.*

Publique Offences, sont tiels queux sont commit vers le Roy, & le Common-  
weale; & ceux sont remedy per voy de Indictment, ou Information;  
Et ceux sont inquire per le Vic. in son Torme, mes ne medler ove ceux  
in le Countie.

¶ Selden sheweth, that in the time of the Saxons, most suits in the Secular or Common Law, were Wilscountiel, and held before the Shesriff in the County Court. Seld. pag. 412.

Also he saith, that in those ancient times, a Jurisdiction of causes  
Eccle.

Ecclesiastick was also exercised (joyntly by the Bishop of the Diocese, and by the Sheriff of the County) at the County Court, where the Bishop and the Sheriff both sate, the one to Judge according to the Laws of the Kingdom, and the other to direct according to Divinity. Ibid.

But at the Norman Conquest, the holding of Ecclesiastick pleas in the County Court was taken away. Ibid.

Nota quod Placita de Latrociniiis, de Hutefio, de plagis & Appellis (quæ Plaints there sunt Contra Coronam Regiam) Coram Coronatoribus & Vicecomite incipere possunt in Curia Comitatus; Sed ad præsens, licet olim ibi non possunt determinari, Artic<sup>o</sup> ad nov. Narr. 77. vide plus Bracton libro 3. cap. 35. & Radulphus de Hengham, Capit. Justic. tempore Regis Ed. 1.

Sed parva brevía de Nocumento, & alia vicecomitalia; & placita de verberatione, & alia quacunque transgressionem, ubi periculum mortis, vel membri, non evenit, & ubi queritur transgressionem non esse perpetratam contra pacem Regiam; ac placita Debiti, & Detentionis, sub summa quadraginta solidorum, ad vicecomitem (& ad alias Curias inferiores) pertinent Audiendum, & Terminandum, Ibid.

Nufance.  
Trespafs.

Debts.  
Detinue.

Ac etiam in quibusdam Casibus, Coram Vicecomite, placita terræ possunt placitari; Quemadmodum si quis deficit de Recto in Curia alicujus Baronis, in breve de Recto in tali Curia portato, Ea de Causa falsare poterit Curiam illam, & per idem breve placitare in comitatu, Quia illud breve in se hoc requirit, cum dicat. Et nisi fecerit, vicecomes noster Cantabr. faciat, ne amplius inde clam<sup>us</sup> audiamus pro defectu recti, &c. Ibid. & Rad. de Hengham.

*Appeals de Robbery & de autre felonies, Maibem & Rape. poent estre sun in le County Court, per bill, devant le Vic. & ascun un des Coroners. Stam. 52. 55. a. 62. 64. 67. & Finch. 115. 116. & Stat. Westm. 1. cap. 10. & Terms del Ley.*

*Mes sur Appeal sue la 21 Sureties de prosequendo serra primes trove al Vic. Stamf. 64. a. & Britton fol. Finch. 5. 115.*

*Le proceedings intiels appeals est come in Appeals in Bank le Roy, sc. Capias, & Exigent, &c. Finch. 113. Vide Stamf. 64. a.*

*Mes, divers ont tennus, que sur appeal commence icy, coment que le Vic. & Coroners poient agard Proces vers le Appellees, &c. uncore sils appear que ils ne poient mitter L' appellees a responder, Mes solement eux garder in prison, & hoc per reason del stat. Mag. Chart. 17 quel veies hic antea, cap. 4. Stamf. 64.*

*Auxi le Viscount ove le Coroner ad power de prender le Appellee de Approuver sc. de felony fait in ascun County D' angliter. Stamf. 52. b. d.*

*Sur Appeals de felony, &c. devant le Vic. & Coroner, le Vic. & Coroners doivent Irrotulare ceo sc. Annum, diem, & locum, & tous les parols del appeal, & les nosmes des pledges de prosequendo, & auters Circumstances, & certifier ceo al Justices.*

*Mes quant al ples de Latrociniiis (seu furtis) dicitur que ceo parol ne intend de furto que fuit Capital, Mes tantum de tortious prisel d' ascun biens, sicome le dit stat. de Westm. 1. cap. 36. parle.*

*Auxi dicitur que ceo parol Hutelio, ne fuit prise icy pur Hue & Cry, Mes potius pur scoldings ou brawlings per que le peace del pais fuit disturbe, de ceo parol Hutin.*

*Nota quant al ceux matters de Appeal, & al Judgments done in ceo County Court sur Exigent (ut hic antea) le County Court est Court de Record; Car Certiorare gist al Coroners a certifier le Record del Utlary (uncore quare, car le Vic. ad le custody de cel Record. Dyer 223. & Finch. 116.)*

*Auxi Capias & Exigent gift in Appeal per bill sue icy, ut supra : Et semble que brief de Error gift (& nemy faux Judgment) sur Error en l' appell'. Finch. 116.*

But Mr. Bracton, libro 3. fol. 154. sheweth, that in his time, in a suit commenced in the County Court, the Plt. ought not to complain de pace Domini Regis fracta; which well agreeth with, and explains the Law as now it is used, sc. that the Sheriff cannot hold plea of Trespasses Contra pacem Domini Regis.

And yet at this day Sheriffs in their County Courts (before themselves only, without the Coroners) by way of Plaint, without any Writ to them directed, may hold Plea of, and may examine, hear, and determine certain smaller personal actions, as of Debts due upon contracts, &c. Detinue of Chattels, Assumpsit, Covenant, Rulances, taking of cattel, and detaining of them, or Replevying of Beasts, Trespasses, and the like, hapning, made, or done, within their County, and where the Debt or Damage is under 40 s. and the Plea determinable by wager of Law; And all this (except in a Replevin) the Sheriff may do by the Common Law. Finch 116.

But the Sheriff cannot by way of Plaint, without Writ, hold plea in a Replevin, by the Common Law. Dyer 246, Finch. 116.

Neither can the Sheriffs by way of Plaint hold Plea in an Accompt, although the sum be under 40 s. Finch. 116. Fitz. Accompt 29. (the reason is, for that the Sheriff hath no authority to assign Auditors.) And yet Fitz. 117. b. that if one entreteth into my Land to my use, and receiveth the profits thereof, &c. I may have an action of Accompt for this in the County; *Mes ceo semble estre per brief de Justicies, & nemy per Pleint.* Also at this day the Sheriff may make Replevins, and may in his County Court hold Plea thereof, by Plaint (without Writ) and may there determine the same, so that the damage exceeds not the sum of 40 s. And this they now may do by force of the stat. of Marlebr. c. 21. & Westm. 2. cap. 2. see more hereof hic postea. But if the damages be above 40 s. it seemeth the Sheriff must then hold Plea by a Justicies, and not by Pleint. *Quære.*

Also concerning these former Actions of Debt, Detinue, Assumpsit, Covenant, and Trespasses, &c. if the Debt or Damage be above 40 s. then they are not to be sued in the County Court, but by a Justicies.

Neither can they hold plea in their County Court, of any Debt due by, or upon Record in any Court of Record; (But otherwise it is of Debt upon Record in the same Court) Nor Debt due upon bond, &c.

Also in an action of Trespasses there holden, no force shall be supposed, for then a Superedeas lieth. Fitz. 299. d. Finch. 116.

Neither can they hold plea in their County Court, of any Disceit, Maintenance, or forger of false Deeds.

Neither can they hold plea of Detinue of Charters concerning freehold. Fitz. 138.

Neither can they hold plea of any freehold, by Plaint where the freehold cometh in question (but by a Justicies.) *Mes si Judgment soit la done de Franktenement sur un pleint, dicitur que il est bon, tanque il soit reverse per brief de faux judgment; sed quære de ceo, Car quant al Real actions in queux terr. serra demand, le Vic. ne est competent judge, Et son proceedings in tiels cases est Coram non iudice.*

*Auxi si ascun plea touchant Franktenement vient en debate in ascun action personal, le County Court est mise hors del jurisdiction, & le party est mise de suer al Common Ley.*

*Issint serra quant forrein (& faux) plea est pleade, (come performance del*  
Con-

*Condition al London. si soit sur obligation, &c. Ou ater forrein plea.) Mes semble reasonable a denier eux de issint pleader, Mes de forcer le def. pour Gager leur Ley ; Car autrement les Def. poient per tiel leur faux pleas, ouster le Vic. de jurisdiction, Et fair tous Suits in le County Court d' estre de petite effect.*

*Si le Vic. voile tener plea in son County, Ou de personal choses ouster 40 s. Ou de Real choses, sans brief de justices, le party poiet Eslier d' aver brief de faux judgment ; Ou autrement poet disobey tous que serra issint fait come chose voide, & fait Coram non Judice.*

Vide plus hic. Cap. 113.

*Et Nota coment les Viscounts en leur County Courts avera Conisans de plees queux sont desoubz 40 s. (come est avantdit,) & queux sont determinable per ley Gager, uncore ceux petite plees fuer' auxi (al Common Ley) determinable in Court le Roy, tanque le stat. de Gloc. Cap. 8. que ceo restrein pur le le Ease del people, Et de superior Judges & Courts, queux sont suffic. trouble ove greindour affairs : Et pur le melior assurance de ceo, le dit stat. de Gloc. voet que le Plt. affirme per sa foy, que les biens prises, ou les Damages, valent 40 s. al moins (sc. in suits devant les Justices,) Mes ceo Serement nest ore in use, & ceo pur l' advantage le Roy (come semble) cibien in actions de trespasss, come del Det.*

Glocester 8.

By the Stat. made 6 E. 1. c. 8. Sheriffs shall hold pleas of trespass in their Counties, as they have accustomed ; sc. where the damages do not amount to the value of 40 s. D<sup>y</sup> that the Plea be not laid to be vi & Annis ; for this Statute is a confirmation of the Common Law.

And by the Statutes of 27 H. 8. c. 26. & 34 H. 8. 26. the Sheriffs of the Counties of Wales, shall hold plea of Replegiare, and all other suits, and plaints, under forty shillings, in their County or Shire Courts, in like manner, as all other Sheriffs do within the Realm of England.

Finch. 116  
N. br. 48.

But this County Court cannot hold plea, where the debt or damages is forty shillings or above, unless it be by a Writ of Justices, *Justiciat.* (out of the Chancery) which the Plaintiff may procure if he will, to be directed to the Sheriff : And that Writ of Justices is a Commission to the Sheriff to hold plea of any sum whatsoever, as well above 40 s. as under that sum ; Neither is this Writ of Justices retournable, but shall be terminated befoze the Sheriff in his County Court.

## C A P. CXI.

**I**N Courts le Roy tous suits perenter party & party commence per brief Original, mes in le County Court (come auxi in auter inferior Courts) ils commence per Pleint ; sc. Cestuy que voile suer un auter icy, il poet aler al Seneschal, ou Officer de mesme Court (en que il purpose de suer) Et Enter son pleint la, accordant al nature de son Case ; Ou autrement il poet ceo fair in plein Court devant le Vic. ou Seneschal, &c. 9 E. 4. fol. 48. que cel Entre del pleint poet estre devant le Vic. en son meason, ou al ascun auter Lieu deins le County ; mes potius devant luy in plein Court. Et accordant a celdarein est le liver. 21 E. 4. que doit estre in plein Court, Et Sedente Curia.

But no Sheriff shall enter any Pleint in his County Court, Except that the Plt. be present in person, or by Attorney or Deputy known to be of good name, and that he find persons known, to be Pledges de  
profe.

Prosequendo ; and he must have but one Pleint for one Trespas or Contract, 11 H. 7. cap. 15.

Le plt. apres son Pleint issint Enter, doit procurer le Proces del Court, sc. (in Cases de Det, Detinue, & Covenant) un Summons, per que le Bailiff serra command de Summoner le def. d'appear al prochain Court, de responder al plt. en son dit Pleint, &c. Et le Vic. doit fair suffic' warrant, precept, ou proces, a son Bailiff de Summoner ou Attacher le def. accordant sub poena 40 s.

Al prochain Court le Seneschal causer les parties d'estre call, primes le plt', & apres le def. Et si le plt. appear, & le def. fait default d'appearance sur le summons, & que summons soit Retorne per le Bailiff, donque auter Proces issiera vers le def. sc. Attachment, &c. Vide hic postea.

And in this County Court the actions must be called, as they are in a Hundred Court, or in a Court Baron.

Stile of the Court.

Cantebr. ff. Prima com. A. B. militis vicecom' comitat. præd. (and so the next Court, Secunda com. A. B. &c.) tent' apud castrum Cantebrigia, tali die & anno, &c. setting down the King's stile at large.

Then the Bailiff must make an Oyes, and say thus, (three times before the Court) Essoins and Proffers pur cest jour, And then he must say, If any man will be essoined or enter any plaints, let them come in and they shall be heard.

Essoin est excusation de default ou absence de party ; sc. in Cases lou action est port, & le plt. ou def. ne poet bien appear in Court al jour, &c. donque il poet estre Essoin ou excuse (pur les causes hic apres expres) de savor son default. Et ceo poet estre auxi bien pur le plt. ou demandant, come pur le tenant ou def. Spec. Jultic. libro. 2. cap. 20. Co. L. 128.

Le droit de chescun Essoin est que le cause de le absence soit Inroll ove le Nofme del Essoiner, issint que si le party adverse ou son Atturney voile traverser le Cause, a ceo est reseceivable ; & sil soit trove faux, donque le Essoin est turne en un default. Ibid.

Uncore Essoin de Malo veniendi (que est le Common Essoin,) coment que soit fait fausement, nul remedy est done pur ceo, car est forsque petite delay, & ideo le plus suffer. Ibid.

Delays.

Et Nota, que le tenant ou def. poiet estre Essoin, in chescun Original brief devant appearance, ove cause, ou sans cause ; per que grand delay ensue al plt.

Et ascun foits le def. poiet estre Essoin apres un Essoin ; Come in un Real action vers tenant pur vie, al retorn del Original le tenant est Essoin, le demandant doit adjourn come, ou 9 common jours del Retorn serra done (per que dimid' Anni est spent ;) Et al jour del Essoin, le tenant voet demand le view, & donque 9 auter jours de retorn serra done. Et la jour del view le tenant poet estre Essoin, Et donque preia Aid de cestuy in reversion ; Et al jour del retorn del Summons le Preyee in Aid voet estre Essoin, & la auter 9 jours de common retorn serra, &c.

Essoin.

If any man will be essoined, it may be entred as the case shall require, sc.

quia in servic' Domini Regis. Icy l'essoier serra juns.  
quia est ultra mar. Per ceo le def. avera 40 jours.  
I. S. essoin' est  
quia non potuit venire propter altitudinem aquar.  
quia est de malo lecti. &c.  
quia ægrotus, vel familia.

There be other manner of essoins which are in plea, the one after summons or attachment, and the other after issue joined, which are to be entred after this manner.

1. I. S.

1. *I. S. Qui summon. fuit (vel attach' fuit) essendi hic, ad hanc Curiam, ad respondend' T. K. de placito debiti (vel similia) modo esson' est per D. R. &c.*

2. *I. S. Que habuit diem usque ad hanc Curiam ad exitum junct' inter T. K. querent' & T. W. defend' modo Esson' est per D. R. &c.*

And in like manner the Plaintiff may be essoined if he will.

And if the one party be essoined at one Court, the other party may be essoined at the next Court.

Whosoever will cast any essoine, he must come at the beginning of the Court, when proclamation is made, or else he ought not to be received. See Statute de Essoinis 12 E. 2.

But note, that the party cannot be essoined in these cases following, *sc.*

If the party himself be seen in Court. Stat. de Ess. 12 E. 2. Dyer 268.

If the party have an Attorney (in the same plea) present in Court; Except they be both essoined.

If the party made default at the last Court before.

Or if the party come in by *Cepi corpus*, or *Distress*.

*Auxi in ceux cases subsequents home ne serra Essoin, sc.*

*Nul apres Appearance (in certain actions) Vide stat. 3 E. 1. 41. & 13 E. 1.*

cap. 21, Et ceux statuts expound Abr. d' Ass. fol. 91, 92. & Finch. 64.

*Nec in Admeasurement de pasture,*

*Nec in Dower. Stat. de Essoin.*

*Nec in Recordare fac' Loquelam.*

*Nec in Replevin, pur l'infinite delay.*

*Nec in Scire facias. Nec in Venire facias.*

*Nec apres jour done ad precem partium. 13 E. 1. cap. 27.*

*Nec apres Essoin nient garrant.*

*Nec ou le plt. n'ad trouve suerty a pursuer. Stat. de Ess.*

*Nec quant le jour n'est venue; On est past. Stat. de Ess.*

*Nec Ou nul Summons est testemoigne. Stat. de Ess.*

*Nec celui que ne fuit n'osme en le brief. Stat. de Ess.*

*Nec nul que adversary est mort.*

*Nec celui que est adjorne de jour en jour.*

*Apres issue join, lorsque un Essoin serra allow 52 H. 3. 13. 13 E. 1. 27.*

*mes ceo serra intend del Common Essoin, Et auxi tantum del def. Dyer 224.*

*Auxi ceux persons desoubz n'osme ne serra Essoinors. sc. Enfant deins age;*

*Ne femes, Nec persons Excommenge; Ne parties in mesme plee;*

*Nec atteints de faux delay; Nec Essoinours auterfoits nient garr.*

*Vide plus de Essoins. Bracton lib. 5. fol. 335. &c.*

Note also, that none shall need swear to warrant his essoin. 52 H. 3. ca. 12. *Mes dicitur que ceo est intend de Common Essoin (sc. de Malo veniendi) & de nul auter; & que devant ceo statute si ascun ad jeet Essoin pur auter, il doit faire Serement que cestuy que il ad Essoin fuit malade, &c. issint que ne poet vener.*

Apres les Essoins sont lie & allow, doncque ils proceeder a les Plee. Et primes le plt. serra demand & call, (que doit estre prist al Cbescur Court pendant son plea; ) Car si le plt. ne soit prist de pursuer son suite & Pleint, & de responder quant il est demand, le Court doit agard luy come Nonsuit en son pleint, Et le plt. mesme, & ses Pledges d'estre amerce, Et le def. ira sans jour.

Si le plt. soit prist, doncque le Bailiff serra demand si le def. soit Summon ou nemy; Et le Bailiff est de faire son Retorne quid il ad fait in ceo, &c.

Mes nota, que le plt. ou def. poet appear per leur Attorneys.

*Si le def. ne appear, dunque la issuera vers le def. un Attachment & apres Distringas, & apres un Alias & Pluries Distr: Et sic Proces per Distres infinite serra fait & issuera vers le def. tanque il appear.*

*Et quant ambideux les parties appear en Court, dunque le plt. doit mitter eins son Declaration, monstrans in ceo son grievance vers le def. &c.*

*Mes primes concernent les Proces de ceo Court, Et apres serra dit les auter proceedings la.*

### Process.

*Process.*

**F**irst, the like Process or Precepts as are made out of the Hundred Court or Court Baron, are to be made out of the County Court <sup>34 H. 6. 49. fi. 116, 117.</sup> mutatis mutandis, viz. a Summons, Attachment, and Distress infinite, which also is the Process at the Common Law; and these are to be made in the Sheriff's name, and to be directed to the Bailiffs.

In the Justices or Vicountiel Writs, the Process is a summons by the defendants goods, an Attachment, and Distress infinite; & if upon the summons a Nihil be returned, then a continual Capias. Finch. 352.

And note, that a Precept or Commandment by parol only in a Court Baron is good enough, without any Precept in writing. 16 H. 7. Br. Proces 184. Finch. 248.

The forms of these Precepts are as follow.

#### A Summons.

*Summons.*

**P**ræceptum est ballivo ibid. quod sum' fac' C. D. quod sit hic ad prox. <sup>Cantebr.</sup> cur' ad respond. A. B. in placito debiti (or detentionis, conventionis, vel similia.) Teste, &c.

*Alias*

R. S. Armiger vicecomes comitat. prædict. ballivo hundred' de R. salutem. Quia I. S. ad com' meum tent' pro comit' prædict' queritur versus I. D. in placito debiti triginta solidorum (vel in placit' transgr', vel in placito detentionis, &c. sicome le pleint est) Et invenit plegios de prosequendo, &c. \* Ideo tibi præcipio, quod sum' fac' præf. I. D. quod sit hic ad prox. Comitatum meum tent' apud D. ad respond' præfat. I. S. in placito præd. Et habeas ibi hoc præceptum, & qualiter, &c. datum 8. die August. ann. Regni Domini nostri, &c.

*Al prochain Court apres le Summons fait, le Seneschal causer les parties d'estre call, primes le plt. & apres le def. Et si le plt. appear, & le defendant fait default d'appearance, & que le Summons soit Return per le Bailiff dunque auter proces issuera vers le def. sc. Attachment, &c.*

Nota, que le primer Original Proces, in plees de Dett, Detinue de Chattels, Covenant, & tous autres personal actions, est un Summons, & apres Attachment, & apres Distress infinite issuera; Sinon in plea de Trespass in que Attachment gist en le primer Original, & apres Distress infinite. Hiccap. 31.

*Et tiel Attachment & Distress serra execute in mesme le forme, cybien en Pleints de Dett, come de Trespass.*

#### An Attachment.

*Cantebr.*

**P**ræceptum est ballivo ibidem quod attachiat' C. D. per omnia bona & cattal' sua, quod sit ad prox. Comitatum meum, ad respond' A. B. de placito debiti, &c. vel transgressionis.

Or this attachment may be made more amply as before (almost *alias* word for word usque ad not\*) Ideo tibi præcipio quod attachias præf. L. D. per omnia bona & catall' sua, quod sit hic ad prox. Comitatum meum, &c. ut supra.

Also the Defendant may be attached by pledges, &c. See plus hic cap. 52. And the Attachment may be thus,

R. S. Armig' Vic' com. præd. ballivo, &c. salutem. Pone per vadios & salvos plegios C. D. quod sit hic ad proxim' Comitatum meum apud C. die Jovis, &c. ac respond. I. S. de placito Debiti, &c.

Upon a precept of Attachment in the County Court, the Officer must not attach the Def. by his person or body; but by his horse, or, pot, pan, &c. cap. 32, & 52.

And the goods or chattels whereby the Def. is so attached, the Bailiff shall keep in his own possession until the next County Court; Except the Def. do replevy the same goods so attached by two Pledges distreina- ble within the County and Jurisdiction of that Court; which pledges shall become sureties that the Def. shall appear at the next Court to answer to the Plt. in his Plaint.

But if the Def. do not by Pledges replevy the said goods so attach- ed, and that the Def. maketh default at the next Court (or at the day given him by the attachment) the Court shall award the goods so at- tached, to be forfeited (and shall keep the same goods as forfeited, &c.) And besides the Court shall award that the Def. be distreined by other of his goods, to be at the next Court after, to answer, &c. And thereupon an Entry shall be made in the Court Book (or Roll) in manner fol- lowing.

I. S. op. se versus C. D. de placito debiti, &c. Et ipse non venit. Ideo ballivo mandatum fuit quod Attachiat præfatum C. D. Qui quidem balli- vus retornavit quod attach. unum equum precii v. s. & non venit. Ideo ipse in m'ia. Et præceptum est quod prædictus C. D. distringatur quod sit hic ad prox. comit. meum, &c. ad respond' præfato I. S. de placito prædicto.

And if the Def. do Replevy the goods attached, by two Pledges (as aforesaid) and then maketh default (i. e. appeareth not) the Court shall then award the said Def. as also his Pledges, to be amerced, and shall amerce them; And besides the Court shall award that the Def. be dis- treined against another day; and then the Entry shall be thus.

I. S. op. se versus C. D. &c. Et ipse non venit. Et ballivus retornavit quod Attachatus est per Pleg. E. F. & G. H. Ideo in m'ia. Et mandatum est quod prædictus C. D. distringatur quod sit, &c. (ut supra.)

### A Distringas.

Præceptum est ballivo ibid. quod distringat F. D. per omnia bona & catalla sua, quod sit ad prox. Comit. meum ad respond' A. B. de Placito debiti, &c. Teste, &c. *Distring'.*

Upon this precept of Distringas, the Bailiff must distrain the Def. by his goods in such manner as he attached him, saving that the At- tachment (or goods attached) is replevied by two Pledges, but the Distress shall not be delivered by fewer than four Mainpernoys or Sureties.

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Sureties, Or else the Bailiff is to keep the Distress, as he should do the Attachment not replevied. And if the Def. thereupon make default, the Distress not mainprised as aforesaid, The Court shall award the distress to be forfeited, and shall keep the same goods as forfeited, &c. And if the Distress be mainprised, and the Def. maketh default of appearance, the Court shall then award the Def. and his Painpernoys to be amerced. And in both cases the Def. shall be distrained again to be at the next Court after to answer to the Plt. &c.

And the Entry shall be thus.

*I. S. op. se versus C. D. de placito debiti, &c. Et ipse non venit, & ballivus retinuit quod distrinxit eum per unum bovem precii v s. Et manucapt. per E. F. G. H. I. & L. M. Ideo in mīa. Et sicut prius distringatur, &c.*

And so procees shall be made against the Def. by Distress infinite, until he do appear, &c.

But for every default of appearance that the Def. shall make, he is not amerciable; but distrainable until he come to the Court, whereat when he appeareth he shall find two Pledges to save his default.

*Alias distring. & plur' distring.*

*Alias.*

**P**Ræc' est ballivo ibid. sicut al' (vel sicut plur') tibi præceptum fuit, quod distringas, &c. ut supra.

Or these may be made more amply, as befoze.

Note, that the goods or cattel, attached or distrained in the County Court (whether it be upon a Justices, or otherwise) shall be forfeited upon the default of appearance by the Def. at the day given him by the Procees; *Car autrement serra vaine de fair Attachment ou distress, si nihil inde evenierit. Vide antea cap. 32. & 35.*

*Venire facias Jurator'.*

*Venir' fac.*

**P**Ræceptum est ballivo ibidem, quod Venire fac' 12 probos & legales homines de ballivo suo, quod sint hic ad prox. cur' ad triand' exit' junct' inter A. B. quer' & C. D. defend' de Placito debiti, vel similia.

And if a full Jury do not appear, then as many as make default, and be not essoined, shall be amerced, and a Decem tales awarded to summon ten more, as followeth, and the same day given to the first Jury.

*Decem tales.*

*A Tales.*

**P**Ræcept' est ballivo ibid. quod Venire fac. decem tales probos & legales homines de balliva sua, quod sint hic ad prox. cur' cum aliis qui sibi ad tunc & ibidem associantur, ad triand. exit. junct. inter A. B. quer' & C. D. defend. de placito debiti, vel similia.

At which day as many as make default, and be not essoined, shall be amerced, and then an Octo tales shall be awarded, and after that if need be a Sex tales.

And if there appear a full Jury, then both the parties shall have their challenges lawful to the Jurors: And if the Jury find for the Plaintiff, then

then they must give costs of suit and damages against the Def. And in the like manner they shall assess damages, if they find for an abbot-ant, in a replevin, &c.

*Le def. esleant atteint en le County Court de trespass, Ou si in action de Det, Detinue, Covenant, ou tiels, soit trouve encounter le d. f. doncque semble, Levavi facias issuera al Officer, de levier les damages & costs, &c.*

At this day it is used, that if the Def. be summoned, and thereupon maketh default, that presently a Levavi facias goeth out, &c. but this seems not warrantable.

*The form of a Levavi fac'.*

**P**Ræceptum est ballivo ibid. quod de bonis & catallis C. D. levavi fac' 20 s. quos A. B. in hac cur' recuperavit versus eum in placito debiti, vel similia, & pro mis. & custagiis suis 12 d. Ita quod denar' illos habeat hic ad prox. cur', ad reddend. præd. A. B. Teste. &c. *Levavi fac'.*

A. B. miles vicecom' com' &c. Quia I. S. ad com' meum (tent' pro com. præd.) recuperavit versus Will. F. 31 s. in placito debiti, & 12 d. pro mis. & custagiis unde prædictus Will. in eadem cur' convictus est, per iudicium cur', Ideo levavi facias secundum consuet' præd. 31 s. in dicta curia ad judicat', & dictos 12 d. pro misis, Et denarios illos habeas ad prox. cur', ad reddend. præfato I. S. pro dampnis præd. Et habeas ibidem hoc precept' & qualiter, &c. datum 24. die April' An. Regni Dom. Reg. &c. 20. *Alias.*

*Uncore le Execution in le County Court est per Distress solement, & mitter in pound tanque soit satisfie; Car ils n'ont power de vender, ou a deliver le Distress al party; Ne nul Execution pur Corps gist la. Finch 117.*

*Et accordant al ceo est un case incerti temporis, Lou home port Pleint de trespass en le County, & declare as damages de 40 s. Et ad Judgment de recover les 40 s. Et sur ceo le Vic' face un precept a son bailly pur prendre les biens del def. & eux reteiner en Pound overt, tanque le def. ad satisfie le plt. pur les 40 s. Vide Keil. 106.*

*Auxi si home recover in Court Baron, le Court n' ad power de fair Execution al plt. de biens le def. mes il poet distr. le def. apres Judgment & reteiner le distress en leur mains, tanque le def. ad satisfie le plt. de ceo que est recover en action de trespass. 21 Ass. pl. 72. Na. bre. 165.*

*Auxi nota que un ne poet aver Capias in Court Baron, ne Execution la per Capias ad satisfac', mes le natural Execution & Proces la, est attachment de biens. &c. per Martin, 3 H. 6. fol. 54. Et ove ceo accord. Mr. Finch fol. 120 que en County Court nul Capias gist, nec en Proces, nec en Execution, mes tantum en Courts de Record. *Cap. ad Satisfac'.**

*Et uncore si sur le Summon Nihil soit Retorne, doncque un Continual Capias issuera quousque, sc. si le suite soit per Justicies. Finch 352.*

And although that the Sheriff shall hold a plea of debt upon a Justicies, yet the Sheriff cannot thereupon award a Capias ad Satisfac'. 2 & Br. Justicies 1. & hic postea fol.

Neither may the Sheriffs take the body of a man in Execution upon a Justicies. 2 H. 4. Br. Justicies 4. Finch 117.

P. Wales 44.

And yet the Sheriffs of Wales upon every judgment had before them in their County or Hundred Courts, in any plaint under 40 s. shall and may (by the Stat. of 34 H. 8.) award a Capias ad Satisfaciend' to arrest the party condemned, or else a Fieri facias at the liberty of the pursuant or plaintiff.

And Mr. Littleton (in his Reading upon the Stat. of Westm. 2. Lectur. 15.) held, that by force of a Justicies in the County Court, the Sheriff

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had

had power to award, Capias, a and also a Capias ad Satisfaciendum; but he made a quære of a Fieri facias. But if the suit in the County be without a Justices, where the trial is only by *Ley Gager*, there it hath been holden that the Plaintiff shall have only a *Distringas* to have Execution.

*Mes pur aver les Viscounts a fair leur Judgments done en leur County Court (ou Bailiffs in leur Hundred Court ou autre Court Baron) sagement destre execute, le party poiet aver Brief de Executione Judicii, le quel le Judgement fuit en le County Court per Justices, ou per pleint sans brief. Et ceo brief de Executione Judicii serra direct al Vic: Et le brief est un Justices, & in tiel forme. Rex, &c. Vic. &c. Præcipimus tibi quod Executionem Judicii nuper reddit. in Com' de loquela quæ nuper fuit in eodem Com. inter A. &c. sine dilatione fieri facias. 18 Register. Fitz. 20. b. & Finch. 68. Et sur ceo le Vic. fera Execution in tiel manner come si le Judgement de estre done en Court de Record.*

*Et si le Vic. ne voile fair Execution sur ceo, un Alias & Pluries issera, &c. Et sil ne voet fair Execution del Judgement donque Attachment serra direct as Coroners vers le Viscount. Fitz. 20. b. Register 18. & viel brief 15. And yet by the Stat. of 34 H.8. cap. 26. the Sheriffs in Wales are enabled upon every Judgement had before them in their Counties or Hundred Court in very Plaint under 40. s. to award a Capias ad Satisfaciendum against the body, or a Fieri fac. at the Plaintiffs choice.*

## C A P. CXII.

### Of the Writs of Justices.

**B**y the Stat. of Westm. 2. cap. 13. it is ordained, that the Sheriffs in their Toznes, and in other places where they have power to enquire of trespassors by the King's precept, or by Office, &c. which words, in other places, seem to be meant of the County Court, and these words, by the Kings Precept, to be intended when the suit is by a Writ of Justices.

And in this County Court pleas are sometimes holden by the King's Writ (out of the Chancery) which is called a Justices, or Vicecount tiel Writ, for that it doth give special power to the Sheriff to hold Plea in his County Court; And this Writ is for the dispatch of Justice in special causes, wherewith the Sheriff of his own authority cannot deal in his County Court: and is in effect but a Commission and giveth this authority to the Sheriff by these words: *Præcipimus tibi quod loquelam Audias, &c. Or Præcipimus tibi quod Justices, &c.* (or the like) and endeth in this manner, *sc. Ne amplius inde Clamorem audiamus, pro defectu Justiciar, &c.* And then the Writ is not Retornable, but the matter shall be tried and determined in the County Court before the Sheriff, and that by an Enquest of 12 men, &c. according to the order of the Common Law: And the proceedings therein shall be as in Writs Original of the like nature in the King's Courts at Westm. &c. Vide Fitz. 85. g. 86. a. & Finch 117. And the Sheriff is to make the Process, &c.

And the same Process shall be in a Justices, as where the suit is there by Plaint, *sc. if it be Account, Det, or the like, the Process shall be Summons, Attachment, and Distress; if Trespass, Attachment,*  
and

and Distress : But no Capias in any case. Finch 117. Vide hic Cap. 31. & 112.

*Auxi plusors actions dun nature poient estre join en un Jusficies, ove several precepts. Finch 117.*

*Ceo Jusficies ne alter le nature del Court, car les Suitoers sont Judge la ; Les pleas ne sont de Record, coment que sont per brief ; Et brief de faux Judgmet gist la, & nemy brief de Erreur. Fitz. Admeas. 2. Co. 6. 11. Finch 117. & hic Cap.*

And these Writs of Justicies are of two sorts ;

Some to have the Plea to be holden befoze the Sheriff only.

Some to have it holden befoze the Sheriff, with the Coroners.

In What cases, or for what matters, a Justicies may be granted, holden, and sued, before the Sheriff alone.

1. Justicies de Accompt may be sued in the County Court against one as Bailiff, that shall occupy, or take the profits of my Land, &c. Fitz. 117. b. Finch 120.

2. Admeasurement de Dower, is Vicountiel (sc. triable in the Sheriffs Court) and shall be sued in the County, &c. and lieth for the Heir, sc. when his Gardian, or himself in his Honage, hath endowed the Wife of his Ancestoz of moze than she ought to have in Dower, then the Heir at his full age may sue this Writ against the Wife, and by this she shall be admeasured. Fitz. 148. g. Finch 118.

And here all the Lands which she hath in Dower within the same County shall be admeasured by the Sheriff, and the surplussage taken from her sc. so much of the Land only shall be taken from her, as exceeds the third part which she is to have in Dower, but she shall have no Land assigned to her in Dower de Novo. Fitz. 148. f. Finch 118.

Note, if the wife cometh and saith that she is ready to be admeasured, the Plt. shall recover no damage. Regitt.

3. Admeasurement de Pasture, is also Vicountiel, and may be sued befoze the Sheriff in his County ; and being directed to him, shall not be Recognizable. Fitz. 125. c. And lieth for a commoner, sc. when another commoner puts on moze beasts or cattel upon the Common than he ought, be it a Common Appendant, or Appurtenant, so it be for a certain number : And here all the commoners shall be admeasured, as well those which have not surcharged, as those which have, and also the Plt. himself (but the Lord shall not be admeasured, Br. view 5.) Finch 118.

*Mes ceo brief ne gist, neque pur le Seignior vers ses tenants queux surcharge, neque pur le tenant vers son Seignior que discharge. Fitz. 125. d.*

Upon this Writ directed to the Sheriff, he ought to hold Plea thereof, otherwise an Alias and Pluries, &c. shall go out, whereupon if he sheweth not cause, an Attachment shall go out against him. Fitz. 125. E.

And upon this Writ of Admeasurement, the Plt. is to enter his Plaint in the County befoze the Sheriff, as he must upon a Replevin sued by Writ befoze the Sheriff. And thereupon the Sheriff shall make his precept to his Bailiff to warn the Defendant to appear, and if he cometh, and cannot shew cause to the contrary, then the Sheriff shall make Admeasurement : But if the Defendant shall shew cause to the Sheriff why Admeasurement should not be made, then the Sheriff shall make no Admeasurement upon this Writ, but the Plea shall be removed into the common Bank, &c. Vide Fitz. 125. g.

A Writ of Annuity may also be sued in the County Court by a Justicies, vide Fitz. 152. b.

Also it appeareth by the Register of Writs, fol. 167. that a man may

may sue a Writ of Covenant by a Justices in the County Court. Fitz. 145. E.

*Et ceo semble destre in le personalty sc. lou home Covenant ove anter per fait de fair a luy un meason, ou auter chose quecunque; Ou luy servir, &c. Et ne fait ceo accordant a son Covenant.*

Et potest breve hoc remove per Pone, & fiat ut in Replegiare: Sed si placitum Conventionis sit sine brevi in Comitatu, tunc fiat Recordare. Register 167.

*Affise de Nufance. Vide hic Nusans.*

Curia clau-  
denda.

Justices de curia claudenda, sc. where a man ought to inclose his ground against his Neighbours ground, and will not. Fitz. 127. g.

Vide my other Book hic six lines, & scribe hic.

De custom. &  
services.

Justices de customs & services, sc. where the Tenant withholdeth his rents or services from his Lord. Fitz. 251. b. c.

Det.

Justices de Debt, and this may be either for a debt of money, or of other goods; and this may be removed out of the County into the Court of Common Pleas by a Pone, either by the Plaintiff or Defendant. Fitz. 119. g. h.

Detinue.

Justices de Detinue, and this plea may be also removed by a Pone out of the County, at the suit of the Plaintiff or Defendant: but the Defendant must shew cause in his Pone, and so needs not the Plaintiff. Fitz. 138. b.

Dower.

Justices de Dower, unde nihil habet: See the form of the Writ, Fitz. 148. b. d.

Droit.

Justices de Droit de Gard; See the form of the Writ, Fitz. 139. f.

*Nota que nul brief de garde poet estre plede in County, forsque brief de Droit de garde. Register 160. Mes per le viel, Na. br. fol. 97. Tous briefs de gard forsque brief de Ejectment de gard pient estre pledes en County.*

Vide plus of these particular Writs following in my other Book.

Justices in brief de droit patent. 39 H. 6. Br. Justic. 6.

Justices de Homine Replegiando. Et ceo gist pur cestuy qui est a tort in prison, ou in prison detein; Come sil estailable, Ou si soit claim come villen, ou come in Gard, lou in verity il est frank & hors de Gard. Fitz. 66. c. & 67. Finch 119.

Mesne.

Justices de Mesne. See the form of the Writ, Fitz. 35. n.

Brief de mesne gist quant le tenant est distrein ou fear d'estre distrein per Seigneur per amound.

Justices de Nativo Habendo, & ceo gist per Seigneur, quant villen in que il ad inheritance, se enfua ne luy. Fitz. 77 a. Finch 118. vide plus hic cap. 67.

Nusans.

Justices de Nusans. Fitz. 184. b. sc. quant Molin ou auter petite Nufance est levy al Nufance d'ascun. Finch. 117. M. br. 110.

Now the Writ of Affise of Nusans, which are Vicontiels (sc. which belong to the Sheriff, or which are triable in the County or Sheriffs Court) appears by these verses following:

rica ca gultum ges lendinum

Fab, fur, porta, domus, vir, gur, mo, murus, ovile,

Et Pons, tradantur hac vicecomitibus,

Id est debent determinari coram vicecomitibus in Comitatu ubi hujusmodi Nocumenta acciderint.

*Et ceux briefs sont appellez petits briefs. N. br. 110, 111.*

Plegiis acquie-  
tand.

Justices de Plegiis acquietandis. See the form of the Writ, Fitz. 137. d. f.

Quarentine.

Justices de Quarentine. Fitz. 161. E.

Note that upon this Writ the Sheriff shall presently after the receipt of the Writ award proces against the party, to cause him to come, &c. and to answer, &c. and shall tarry till his County Court, but

but immediately shall proceed thereupon as Justices shall do upon a Commission of Oyer and Terminer, &c. Fitz. 162. a.

Justices de Quod permittat. See the form of the writ, Fitz. 123. g. *Quod permittat*  
& le viel Na. br. 61.

Justices de Rationabil. divis. Fitz. 128. p. q.

Et ceo brief gist pur Seignour sur quel terr. ou wast, un auter Seignour que ad Seignorie adjoin en auter ville, ad per petit encroache deins temps de memory tanque ore, vers le Seignour qui issint encroache. Vide le viel Na. br. 73. & 74. & Finch. 119.

In this the Plaintiff shall make his plaint before the Sheriff in the nature of a count, and thereupon the Sheriff shall make his precept to warn the Defendant, &c. and when he cometh the Plaintiff shall make his count, and the Defendant shall answer thereupon in the County; and if the Defendant cannot deny it, &c. then the Sheriff shall make the partition and division of the Lands between them by meets and bounds: but if the Defendant will plead, and joyn the issue sur le mere droit, & lui mitter in grand assise, the Plaintiff ought to remove thus, &c. or the Defendant may remove it upon shewing cause, &c. Fitz. 128.

Justices de Replevin sc. pur biens & Chattels distrein. Fitz. 68. d. Mes le Vic. devant delivrance, prender pledges de Returno habendo, cibien come de prosequendo, per stat. West. 2. Cap. 2. Finch. 119.

Les def. recouvrera costs & damages si le matter soit trouve pur eux, ou le Pl. soit Nonsue, ou autrement barr. Ibid.

Sur Replevin sue icy, si les biens sont esloin, issint que al suit del tenant ne poient estre restore (come esteant chascun al Fort ou Castle, Ou hors del County, &c. per que le Vic. sur Pluries retorn que sont esloigne) Proces de withernam issiera &c. Fitz. 73. Finch. 119.

Upon the Pluries not served, the power of the Sheriff is determined, 2 H. 7. fol. 6. Finch. 120.

So if the Defendant claimeth property, the power of the Sheriff is determined. See hiccap. 114. But if the Defendant claimeth no property, then the Sheriff shall deliver them, &c.

Justices de secta ad molendinum. See the form of the writ, Fitz. *Secta ad molend.*  
123. a.

Justices de Trespas: Note that for every mannner of trespass done, *Trespas.*  
Fitz. 86. a. g. a man may have this writ directed to the Sheriff to determine the matter before him in his County Court; and by this writ the Sheriff may hear and determine of the trespass by an Enquest according to the order of the Common Law; and the Plaintiff may count upon this writ to the damages of 20 l. or more. Fitz. 85, 86, 87.

But the form of this writ of Trespas which is Wicountiel, shall not say, or suppose the Trespas to be vi. & armis.

And here note, that these writs of Justices do not only lie of Trespas, and other personal things, (as of Accompt, Annuity, Covenant, Debt, &c.) but also of things and in writs which are Real, (as of Customs and Services, Dower, &c.) as appeareth here before.

Also although the Freehold shall come in question, where the lute is by a Justice in the County Court, yet the Court shall not surcease, but may determine the issue, 14 H. 8. 15. b. Br. Jurisd. 21. Finch 320. &c. Vide.

But if the Writ of Pleint shall be, vi. & armis vulneravit, or contra pacem, the Sheriff cannot determine them. Register 92.

Note that the words of a writ de Justices, are always after this sort; Rex Vic. Cantabr. salutem. Pracipimus tibi quod Justices A. quod, &c. Co. 6. 11.

Upon these former writs of Justices, the Sheriff in his County Court

Court shall hear and determine the matters by an Enquest of xii men, according to the Order of the Common Law.

And the Plt. may count upon these writs to the damage of 20. l. or more, yea, to any sum whatsoever. Finch, 318.

But note that the Justices is no Original, but only a Commission <sup>3 H. 6. 54.</sup> to the Sheriff, to give him power to hold Plea above 21 s. in his <sup>7 E. 4.</sup> County Court. Br. Justices 1. 3.

And in a Justices although the Writ be directed to the Sheriff, and <sup>7 H. 6.</sup> be quod Justices T. &c. yet the Sheriff is not Judge therein, but the <sup>Br. Just. 3.</sup> Justices are Judges; and a Writ of false Judgment lieth upon their erroneous Judgment, &c. See Co. 4. 32. & 6. fol. 11.

A Justices cometh to the Sheriff to hold plea upon an obligation of <sup>3 E. 4.</sup> 1000 marks, the Sheriff by virtue of the said Writ may hold plea <sup>Br. Just. 1.</sup> thereof; but the Sheriff cannot thereupon award a Capias, nor a Capias, ad satisfaciendum.

*Capias ne gisf.* And to the Sheriff cannot take the body of a man upon a Justices, <sup>2 H. 4.</sup> nor upon the Writ de Nativio habendo; for although the Writ be Ha- <sup>Br. Just. 4.</sup> bere facias talem nativum, & fugitivum suum, &c. yet this is to no other <sup>Fauv. Im. 30.</sup> intent, but only to give the Sheriff power to hold plea, &c. And the proces in a Writ de Nativio habendo, is, and always hath been summons, attachment, and distress.

So that this Writ of Justices is but in the nature of a Distringas, to distrain a man by his goods, to answer there to the plaintiffs action; for his body cannot be touched with it by Law, nor his Lands.

*Vic' seer luy  
mesme.*

Also upon a Justices directed to the Sheriff to hold plea, the Sheriff <sup>34 H. 6.</sup> cannot make his precept or warrant to the Bailiff of a Franchise, <sup>Br. Just. 2.</sup> neither may he suffer him to have consilience thereof, neither may any <sup>Fitz. Bar. 161.</sup> other hold plea by force of a Justices directed to the Sheriff, but only the Sheriff himself, per Curiam.

A Justices came to the Sheriff to hold plea of 1000 l. and he held plea thereof in his County, before his Under-Sheriff, and that was assigned for error, in a Writ of false Judgment. 21 H. 6. Br. Officer 31. & Deputy 19.

*What Pleas shall be holden by Writ of Justices in the County Court, before the Sheriff, with the Coroners.*

1. **T**HE Writ de Odio & Atia, for the replevying or bailing of persons indicted of murder. But this is out of use. Vide Finch. 120.

2. The Writ de recaptione may also be sued in the County Court before the Sheriff and the Coroners. Fitz. 72. d. h. 73. d.

*Et ceo brief gisf quant celuy qui ad biens distrein devant pur Rent ou services, & ils sont distrein arere pur mesme cause, pendant le plea en le County Court. Finch. 121. Vide plus ibidem & Fitz. 71.*

*Si home soit convicte devant le Vic. en brief de Recaptione, il serra amerce, & render damages al party. Finch 73. d.*

*Note, where any plea is holden in the County Court by a Justices, yet the same may be removed into the Court of Common Pleas.*

*Proces.*

*Attachment.*

*Plea remove.*

*Nota, que le Proces in Justices est attachment, a quel jour sil appiert, ou soit Essoin, le chose per que est attach ne serra forfeit, mes sil ne appiert, ne est Essoin, serra forfeit. 21 E. 4. Br. Attach. 11.*

*Note, that whensoever an action (or what action soever) is brought or sued, in the County Court before the Sheriff, by a Justices, or otherwise, be it by Pleint, or Writ, the same suit, or plea may afterwards be removed out of the County Court, into the King's Bench, or Common*

Common Place for them to hold Plea thereof by the King's Writ directed to the Sheriff, either at the Suit of the Plaintiff or Defendant.

Fitz. 69, 70. a.  
Libr. Intr. tit.  
Jussicies.

And this the Plaintiff may do in most Cases without any cause shewed by him in his Writ: But the Defendant cannot remove the Plea, without shewing cause in his Writ: as if the Defendant will shew that he befoze whom the Writ depends, maintains or favours the Plaintiff, &c. Fitz. 70. a. & 119. i. Vide Plo. 74. & Finch. 122. Regist. 84.

*Ou le def. poet plead un forrein plee, que ne poit estre trie in le County Court, Regula. &c. Fitz. 115. i. Sicome lou pleint est affirme en le County de xx s. ou, &c. le def. poet pleade un Release en forrein County ou Ville, ou auter chose que ne poet estre trie in le County Court, Et sur ceo le def. poet remover le plee.*

Nota que si le Replevin soit sue in le County, per

Fitz. 70.

{ Brief }  
{ Plaint sans brief } doit estre remove, per {Pone.  
Recordare.

Finch 122.

Nota que Recordare, Pone, ou tiel, sont a nul auter intent forsque a remover chose ou Suite en Ceurts le Roy, & sont en nature de Certiorari, & sur le remover, le Recordare, ou Pone est determine; Car le plee ne serra tenu sur eux, mes sur le pleint que est remove, & les primer Pledges estoier. Finch. 122.

Le Pone, lou est al suit de plt. en Replevin, command que le Vic. Summon le def. que il soit in banco a responder, &c. 12 E. 4. 11.

Mes lou est al suit del def. est forsque un dicas querenti, le quel n'est que prefixion del jour al parties. Finch. 122.

Un Certiorari auxi poet estre direct al ascun Court de Record, d'estre certifie d'ascun Record que est devant eux: Et per tiel brief de Certiorari, le Record mesme poet estre Remove, &c. Vide mon Country Justic. cap. 134.

Si pleint soit remove hors del County per Recordare, &c. & le brief de Recordare port date avant que le pleint soit enter in le County, uncore le record est bien remove, pur ceo que ambideux courts sont courts le Roy. Fitz. 71. d.

Si le pleint soit discontinue in le County, uncore le pl. ou def. poet remover ceo pleint in common bank ou bank le Roy, per Recordare, &c. & serra bone, & il poit counter sur ceo, &c. & le Court tener plea sur ceo pleint: car si le pleint soit continue in le County, & issue join sur ceo, uncore riens serra remove forsque le pleint solement, & in Common Bank le pl. counter de novel, &c.

Si pleint soit remove hors del County in banco, ne serra apres remand, quia ambideux sont Courts del Roy; & le cause de remover hors del County nest traversable. Vide Fitz. Cause de remover plee 71. 13 E. 3.

Fitz. 71. a.

Si le Vic. remove le plee hors d'ascun Court per Pone, al suit le pl. ou def. & puis les Bailiffs, ou officers del Court proceed sur le pleint, & done judgment, & font exec, &c. dunque le def. ou cestuy vers que judgment ou exec est fait, a vera brief d'attachement vers le Bailiffs, ou ceux que issint proceed al judgment, &c. de respond al Roy cibien del contempt, come al party des damages, &c. Fitz. 119. k.

Nota que hors de Court Baron, ou auters tiels Courts del Seigneors, Pleees poient estre remove per un Accedas ad Curiam: Mes si sont les Courts le Roy, dunque si sont in Courts que ne sont de Record, come le County Court, la le plee serra remove per Recordare, ou Pone; mes in tiels Courts le Roy, que sont de Record, le plee serra remove per Certiorari.

Br. Court  
Bar. 12.

In action de trespass port in le County Court, si le def. plead son franktenuement, ou auter tiel plee, le Court ne doit proceder custer, mes doit ceaser de tener plee; & sils proceed, brief de faux judgment voet giser.

En Det port in le County pur Rent sur un Lease a terme des ans, le def. plede

plede que le plt. luy inseoiff de cel ter. ceo ouster le Court del jurisdiction.

Issint si le def. plede que le ter. est Auncien Demeſne.

Si ascun chose que concerne Franktenement vient en question en un pleint de trespass, ou tiel (en le County Court) le Court ne proceeder; come lou le def. avow pur damage fesant, & plt. justifie pur Common de pasture. Mes suis (in le County Court) per brief proceeder; & pur ceo en tiel case sur pleint in le County Court, le party n'ad remedy forsque brief de trespass Vicountiel, & per ceo le Vic. poet determine l'issue coment que franktenement vient in debate. Finch 117, 120.

In trespass des arbres coupes, de def. claim property in le soil; si se plee soit sans brief ceo Court n'ad power pur determine le Realty. N. bre. 48.

Auxi si le def. claim le pl. destre son villein, le Court ceaser de tener plee; Ibid. & sils proceede brief de faux Judgment gift. Br. Court Baron 21.

Sur faux Judgment done en ceo Court, le party grieve avera brief de faux Judgment a remover ceo, que voile que le Vic. recorder ceo, & d'aver in Banco. Finch 117.

Prohibition.

Si home sue auter en le County Court, pur charters concernant inheritance, Fitz. 47. b. ou franktenement, prohibition gift.

Si home impleade auter in le County Court, (sans Justicies) des detts, ou chattels, que amout a le somme de 40 s. le party avera prohibition vers le Vic. commandant luy que il ne tener plee, & que il dira al party pl. que il suer in le Common Bank: Ou le party poet aver Superfeudas. Fitz. 239. h.

Si home doit al auter sinque marks, & le creditor sua several pleints de ceo in le County Court vers le dettor, Prohibition ou Superfeudas gift. Fitz. 46. a. Finch 116.

Issint est si home voil suer in le County Court, brief de Covenant ou de Trespass, ad damage de 40 s. ou plus, le party avera Prohibition ou Superfeudas. Fitz. 239. h. n. bre. 63. Ibidem.

Issint semble si en le County le plt. demand 39 s. & declare al damages de 16 d. le Court serra ouste de jurisdiction.

Après jugement.

Issint si le executors sue in le County Court, pur det de six marks, per divers pleints, &c. lou le det est sur un contract, ou sur un obligation, ore le defendant poet monstre cel, & pleader al jurisdiction del Court, ou il poet aver brief de Prohibition ou Superfeudas, &c. & sil aver Judgment in ascun des pleints sue del parcel de ceo det, uncore in le prohibition il poet luy inhibiter de proceeder in ceux pleints, que sont pendants, & que il cessa del execution del judgment del residue. Fitz. 46. e. & 239. h.

Auxi si home sue in le County un pleint de 20 l. & ad judgment de recover ceo in mesme le Court, uncore le defendant poit suer un brief de Prohibition (ou Superfeudas) commandant le Vic' & les sutors, que ils ne executer cel Judgment, coment que ils ad admis le Jurisdiction avant. Ibidem.

Après exécution.

Issint apres Judgment done, & execution agard in le County Court, (de det de sum de 40 s. &c. ou des damages in trespass amoutant a tiel sum, ou plus) le def. poet aver brief de prohibiti' al Vic' que il surceaser de faire execution, & sil ad distrein le party de fair satisfaction, &c. que donque il releaser cest distress, &c. & que il revoke ceo que il ad fait in ceo part.

Nota si le Vic', &c. ne surcease, sur tiel prohibition delivrer a luy, donque Alias, Pluries, & Attachment, giser vers le Vic', &c.

Nota que est rule in le Register, Quod si placita de catallis, vel debitis, quæ summam quadraginta solidor' attingunt vel eam excedunt in comitatu (vel in alia curia) sine breve placitentur (quod absit) non fiat inde breve de falso judicio, nec recordent', nec breve de Execut' Judicii; exceptis cur' civitatis, & aliis, quæ secundum consuetudinem, hujusmodi jurisdiction' habent. Fitz. 46, 47.

Auxi

Fitz. 86. g.

Auxi nota, que pur chesc' manner de trespasss fait, home poet eslier de aver brief direct al Vic' a determin' cest matter devant luy in son County; ou suer brief direct al Vic. retournable in Bank le Roy, ou Common Bank.

Fitz. 47. a.  
Br. Justic. 5.

Et uncore le Vic' ne poet tener plee in son County Court de trespasss, ou autre action, lou l'offence serra lay destre vi & armis, & sil fait, le def. poet aver Superfedas, ou prohibition al Vic' command' luy de surcesser, &c. Finch. 116. & Fitz. 239. d.

Nota per Littleton, que home poit aver Justicies de trespasss sans vi & armis, & la le def. ne serra fine pur le trespasss, 8 E. 4. 15. Br. Justic' 5. vide Fitz. 85. g. que le brief de trespasss que est Vicountiel, ne dira quare vi & armis, &c. Et vide le form del brief ibidem.

Sur faux Judgment done sur pleint in County ou Hundred Court, & sur brief de Justicies in le County, brief de faux Judgment gift, & nemy brief de error, coment que le Judgment est de det, ou trespasss ouster 40 s. Fitz. 17. 18. & 19.

Nota, pleint ne poet estre fait in County Court, si non in plein County, & Plaints. sedente curia, & non extra curiam; car les suitors sont Judges la, & le Vic. est forsqe minister, & le proces serra agard per les suitors. 21 E. 4. Br. Pleint 21.

Uncore Vic' poit faire replevin hors del Court, aliter serra mischief de terger pur mes beaists tanque le County, Et ceo ad estre use de temps dont memory, &c. per tout Anglitterre per Pigot & Brian ibid. & 9 E. 4. fol. 48.

Mes Withernam ne poet estre award ou grant, nisi in plein County, Pigot ibid.

Plees tenus devant le Vic' in son County, ne sont de Record, soit per brief de Justicies, ou autrement. Br. Recog. 18.

Touts Pleints enter devant le Vic', &c. doit estre per Escrip, car home ne serra mise a responder a nul chose, sil ne soit matter en Escrip per Littleton 9. c. 4. 48.

La manner de quel entry. Vide hic cap. 114.

Auxi nota que tiel entries, pleints, respersions, barres, & issues, sont destre fait, & mise ains, al County Courts, come sont use in le Hundred Court, ou Court Baron, Mutatis Mutandis.

Auxi tous trials (per pleint) devant le Vic' in son County Court, serra solement per gager del Ley (sc. per le serement del def.) uncore per Prescription poet estre per Jury, sc. per le verdit de xij homes, que est enconnter le common course. Finch. 117.

Nota, que Ley gager doit semper estre fait devant le Judge. Co. L. 168. b.

Al Common Ley sur Gager del Ley in ascun Court de Record, le party doit aver port Fideles telles. Ibidem.

Mes in Courts que ne fuer' de Record le def. poet aver Gage sa Ley sans Fideles testes, tanque le stat. de Mag. Charta, cap. 28. Co. L. 168.

Et in Det vers Enfant deins age, cest suffic. cause de remover le Plea, pur ceo que il ne poet Gager son Ley.

Mes ou le suit est per Justicies, la le Trial serra per un Enquest de xij homes. Stat. Westm. 2. cap. 13. & Fitz. 86.

Auxi le trial icy (sur pleint) poet estre per Examination, come si in plee de dett, le def. demand quel le plt. ad de prover le det, le plt. poet produce ses testimoignes al Contract, que serra jure, & Examin, & sils done Evidence, pur le plt. il recovera son det & damages.

Auxi si le def. Confess le action del plt. en tiel case le plt. recovera son demand, &c.

Concernant Gager del Ley, le Stat. de Mag. Charta, cap. 28. voet quod Nullus ballivus de cætero ponat aliquem ad legem manifestum, nec ad

juramenti simplici loquela sua, sine testibus fidelibus ad hoc inductis, sc. nullo mitter aucun home a sa Lay (in aucun action devant Vic. Bailly, Escheater ou Coroner) per son simple parol sans Pledges a ceo prises; Nec ad Juramentum, sc. a sa Ley faire d'aucun chose, sans xj maines, & il mesme le xij maine. Et si aucun fait encounter ceo stat. Prohibition gist, ou brief de faux Judgment.

Quant aucun voile gager sa Ley, il doit venir al Commencement del Court & doit proffer de gage sa ley, &c. Le gager del ley est en tiel manner sc. (in action de Det port sur simple contract, Detinue, & tiels) le defendant doit jurer sur un liver, que il ne doit al plt. l'argent que il demand ne aucun part del ceo, *or that he not detaineth the Goods, &c.* Et il covient aver ove luy xj maines (ut supra, ou tiel number que le Court agarder) de jurer ove luy, sc. que ils intend, ou pense en leur Consciencies, que il disoit & jure verament, & sur ceo il serra discharge. Vide Co. 9. 31. que le def. fera sa ley de Duodena manu, sc. xj ouster luy mesme. Et sic ley gager countervault un Jury.

Mes si action soit commence sur aucun especialty, ou sur matter de Record, ou sur chose touche terre &c. la le def. ne aider luy mesme per gager del ley, mes de mitter in Trial per verdict de xij homes.

Auxi in plea de trespass, le def. dira que il nest culp. Et sur ceo il peut offer de gager sa ley; si ne soit in trespass contra pacem.

Et in ceux cases ou le def. gage sa ley, apres son issue per ley gager prise, le def. avera jour usque al prochain Court, & de trouver Pledges de gage sa ley, ut supra.

Mes si le defendant fail de sa ley gager (sc. sil fait default al jour appoint per le Court; ou si ses testimonies refuse a depose, &c. Ou si tous testimonies ne veigne eins, &c.) en chescun tiel case le plt. recovera tous ses demands, ovresques ses damages, accordant a son Declaration, sans aucun taxation del Court.

Ley gager poet estre in divers auters Cases, come in action de Covenant, Detinue, Replevin, &c. Mes cestuy que voet gage sa ley, soit il bien advise que il traversa le point sur que l'action est maintein; come le duty en Case de Det; le deteiner en Case de Detinue; le breach del Covenant en brief de Covenant; & le prisel del avers en Case de Replevin, &c.

If any Man will enter any Plaints in the County Court, they must be entred in the full Court before the Sheriff, &c. after this manner.

A. B. Quæritur versus C. D. de placito debiti (vel de placito detention' vel de placito caption' & injuste detention' averior' suorum, vel de placito Convent. fract. vel de placito transgress. vel similia, as the Case shall be.)

Pleadings, &c. in Debt.

		<i>Sur accompt.</i> <i>Sur obligation, ou autre specialty.</i> <i>Sur retainer pur wages.</i> <i>Sur mutuatus.</i> <i>Sur bailment per autres mains.</i> <i>Per executors, &amp; vers executors.</i> <i>Per administrators, &amp; vers admin<sup>s</sup></i>	
	Declaratio		
In Debt	Barr <sup>r</sup>	<i>Per paiement.</i> <i>Prist a payer.</i> <i>Per acquittance.</i> <i>Per release.</i> <i>Obligation fait pur le det.</i> <i>Per concord.</i> <i>Per arbitrement, que il ad performe.</i> <i>Per nul arbitrement fait devant tiel jour.</i> <i>Non est factum.</i> <i>Per minas ou dures.</i>	<i>Rien luy doit, &amp; issue sur ceo.</i> <i>Rien luy doit per Ley Gager.</i> <i>Deins age.</i> <i>Que el fuit covert al temps.</i> <i>Que le plaintiff ad baron.</i> <i>Ne unques admin<sup>s</sup>.</i> <i>Plene admin<sup>s</sup>.</i> <i>Confession.</i> <i>Imparlaus.</i> <i>Non sum informatus.</i> <i>Nihil dicit.</i>
		Vel	

Replication.

Rejoinder.

Demurrer.

		Declaratio.	
In Detinue	{	Barr	Per non detinet.
			Non detinet per ley gager.
			Per done.
			Per release.
			Que le Plaintiff deliver ceo in gage al defendant pur 20 l. &c. & que n'ad pay le 20 l.
			Que fuit bail pur le Plaintiff, & A.

			<i>Sur assumpsit.</i>
			<i>Pur defamation.</i>
			<i>Sur bailment.</i>
		<i>Declaratio</i>	<i>Sur detinue.</i>
			<i>Sur garranter de chose vend.</i>
			<i>Pur rumper del stagné, &amp;c.</i>
<i>In Action sur le Case.</i>	<i>Barr<sup>r</sup></i>		
			<i>Non assumpsit modo, &amp;c.</i>
			<i>Non culp.</i>
			<i>Per concord perform.</i>
			<i>Non warrantizavit.</i>

*In Replevin*

{	Avoirie	{ Pur damage feſant.
		{ Pur rent.
		{ Pur amercement in Leet ou Hundred.
		{ De injuria ſua propria, vel ut ſerviens.
	Barr <sup>e</sup>	{ Que les averes enter pur default de encloſer.
		{ Pur common.
{ Rien avere.		

Declaratio

Pur meason, ou close debruse.  
De chival, money, ou biens prise.  
De ses barbits Cbafes per chiens.  
De assault & battery.  
De assault & imprisonment.  
De battery de son servant, ou chival.

Non culp.  
Pur prisel pur amercement in Leet, &c.  
De son assauls demesne.  
Que le pl<sup>e</sup> enter in close de def. & enfreint ses hedges  
(ou prent tiels biens,) per que le defendant luy  
require a departer, &c. & mit ses mains moliter sur  
luy, de luy faire departer, que est mesme le tref-  
pas.  
Pur arbitrement, & performance del ceo.

For the better and more ample Form of all these, and the like Pleadings, &c. see the Book of Entries.

The Sheriff and his Officers and Clerks, for the entering of Pleaints, Proceſs, Pleas, and Judgments in their County Courts, ſhall take the ordinary and uſual Fees, and if they take any more, it is Extortion.

C A P. CXIII.

*Replevin sur  
plaint.*

**T**HE Sheriff upon Complaint made to him (that the Beasts of any Man be taken and wrongfully withholden) may deliver them without any let or gainsaying of him that took the Beasts, if they were taken out of Liberties; And if the Beasts were taken within any Liberty, and the Bailiff of the Liberty will not deliver them (upon the Sheriffs Precept) then the Sheriff for default of those Bailiffs shall cause them to be delivered: And this is by force of the Statute 52 H.3. Whereas befoze by the Common Law, when any Mans Cattel were taken and withholden, the Sheriff could not make Replevy or Deliverance of the Cattel, or the Goods so taken and withholden, without the King's Writ. Dyer 246. Fitz. Retorn. 17.

*Iffint si un Seignior uft destrein son tenant, pur ses services oꝝ Rent arere, le tenant poiet aver un Replevin al Common Ley; Mes ceo il ne point aver ou suer, sinon per brief, tanque ceo stat. de Marlebr. fait. An. 52 H. 3. c. 21. Et Ore per cel stat. le tenant poet maintenant venger al Vic. ou le prisel est fait, Et le Vic. fera la delivrance sur son Plaint, sans br. Lector.*

Et sic Nota a ceo jour, que le tenant, ou auter person, queux avers sont prise & injuste detein, poet essier de suer Replevin per brief, Ou per Pleint & ceo per force del ceo stat. de Marlebr. que Ordein, quod post querimoniam, &c. Vic. deliberare potest, &c. ibid. **Eut**

But

But the Sheriff must first take Pledges of the Plt. de Prosequendo, & de Returno habendo (sic hic postea.) Also the Sheriff must take heed that he delivereth not one Man's Cattell for anothers.

3 E. 1. c. 17.  
P. Distr. 4.  
Co. 5. 93.

By another Statute made Anno 3 E. 1. it is provided, That if any take the Beasts of another Man, and drive them into a Castle or Fortres, and there hold them (being solemnly demanded by the Sheriff, or Bailiff) against Wages and Pledges, so that the Sheriff or Bailiff cannot make Deliverance of them to the Owner, there the Sheriff, or Bailiff taking with them the Power of the Countie or Bailiwick, shall beat down the Castle; and the Plaintiff shall recover double Damages for all the Loss he hath received by his Cattell, hindrance of his Gainage, or in other manner (after the first demand of the Cattell made by the Sheriff, or Bailiff) against him that took the Cattell, or against his Lord, if he be not able to answer them. West. 1. 3 E. 1. 17.

But the Sheriff may not break the Close to make a Replevy, where there is a Gate, except the Gate be locked, &c. 20 H. 6. 30.

*In detiniant distresses la fuer' divers mischiefs al Common Ley.*

1. Cestuy que ad distrein voet esloiner le distres hors del Countie, mes pur remedier ceo, le stat. de Marlebr. cap. 4. fuit fait.

2. Si cestuy que distrein voile que le Owner n'avera delivery de ses beasts, adonque il voile Encloser eux in Castle, &c. Ou chaser eux en Franchise, issint que le Vic. ne poet fair deliverance, coment que il voet; pur remedier quel tort, il est ore purview per ceo stat. de West. 1. cap. 17. que si soit en Castle ou fort, le Vic. poet. abater ceo & fair delivery. Et si sont en Franchise, que donque le Vic. poet Enter le Franchise de fair replevin (sc. sur default del Bailiff de Franchise) vide hic postea.

Issint si cestuy que distrein voet mitter les beasts en ascun auter Lieu, en le quel delivery ne poet estre fait, Come sil mett eux en un Parke, ou en un meason, ou en un Close, &c.

Mes sil avoit mise ou Enchase les beasts, &c. En un Rectory, la le Vic. ne puisset fair deliverance del eux. Fitz. 68. g. Car nient plus que avers poet estre distrein la, nient plus poet ils estre deliver la; per que pur avoider tous inconveniences, le stat. fait 1 & 2 Ph. & M. cap. 12. Ordein que les avers prise ne serra mise en auter Lieu, que en Pound overt, le quel est exponnd en nostre livers, d'estre tiel Lieu a que le owner poet vener a doner son Cattell sustenance, & a que le Vic. poet vener pur fair deliverance sans danger d'auter. 5 H. 7. fol. 9. 11 H. 7. 14. & 21 H. 7. 41.

Auxi per le dit stat. de Westm. 1. si le Cattell sont mise in Castle, &c. le Vic. poet prender Posse Comitatus, de fair deliverance.

Issint si les avers sont mise en un Parke, Ou en un meason, &c. Ou si ascun auter disturbance soit fait al Vic. (ou al auter Bailiff le Roy, &c.) ils poent prender Posse Comitatus pur fair deliverance.

Me les Vic. ou auter Officer, doit primes vener al Lieu, & la demand le view del Cattell, & de admonish' l'auter de fair deliverance; & sil ne poet aver le view, ou sil soit disturbe, ou deny de fair delivery, soit ascun present ou nemy sils n'ont d'estre garny, le Vic. maintenant abater le Castle, &c. & fera deliverance del Cattell. Vide le dit Stat. & Briton. fol. 54. & viel N. br. 44.

¶ Bracton, libro 3. cap. 37. writing hereof saith thus: Officium vicecom' est, si quis Conqueratur de injusta Captione, vel injusta Detentione contra vadium & plegium, Quod cum breve Domini Regis super-  
venerit & receperit, &c. Vel etiam ad Querelam alicujus sine brevi, (accepta ab eo prius securitate de prosequendo) in propria persona sua, si ad hoc intendere possit, accedat Vicecom' ad locum ubi averia  
detenta

detenta sunt, ut dicitur, vel si ipse vicecomes non possit, mittat servientem suum, Et statim cum venerit, petat visum de averiis illius ubicunque inclusa fuerint. Et si sit aliquis Contradictor vel qui velit Contradicere quod inde visum habere non poterit, vel propter hoc in eum manus violentas injecerit, Statim levet hutelium & clamorem, Et capiat delinquentes, & in Gao-lam projiciat, quousque Dominus Rex inde præceperit voluntatem suam, Et averia capta deliberet si inveniantur. Si autem inveniri non possunt, eo quod alibi fugata sunt, vel extra com' in fraudem, Et Captor terram habuerit in Com' & Catalla, capiat serviens Domini Regis de averiis illius in duplum, & illa detineat donec averia sic abducta reducantur. And a little after he saith, Cum autem vicecomes vel serviens Regis visum habuerit de averiis Captis sine impedimento & contradictione, statim faciat ea deliberari querenti, Et statim det utrique eorum diem ad proximum Comitatum, ut illi qui cepit averia, quorum captio dedici non poterit contra Recordum Vic. vel servientis, sive justa fuerit sive injusta, ostendet rationem quare illa juste ceperit, Et tunc ille qui petit dicat si possit quod injuste: Ad quem comitatum nullum de jure competeret Captori Essonium, cum injusta Captio & detentio contra vadium & plegium, dici poterit quædam roberia contra pacem Domini regis.

So that by this former statute of Westm. 1. cap. 17. the Sheriff may break open a Man's Castle or House, to make a Replevin, when the Cattel or Goods of another, which he hath distrained, be by him conveyed into his House, or Castle, to prevent the Owner to have Replevin of his Goods: And yet here before the Sheriff (or his Officers) shall break such House, or Castle, they ought first to demand that the Cattel, or Goods be delivered them. Co. 5. 93.

At the Common Law, if the Tenant had sued a Replevin against his Lord in the County Court, the Tenant might have removed the Plea into the Court of Common Pleas, and there if the Lord had avowed for his Rent or other Services, and the Tenant had disclaimed to hold of him, the Lord thereupon should have had a *Writ de droit sur Disclaimers*; & if it were found that he held of the Lord, the Lord should recover the Land in lieu of the services for such false Disclaimer: But yet this mischief was, that if the Tenant had perceived that the Lord would avow &c. the Tenant would have disclaimed and then presently he should have recovered his Damages, and the Lord should have been amerced, for that by the Disclaimer the County Court was ousted of Jurisdiction, for they could not try this Disclaimer, in as much as they were not Judges of the Record; and the Lord himself could not have removed the Plea but in special cases, and by reason hereof the Lords were often at great mischief: Again, if the Tenant had sued a Replevin in the County Court, and the Lord had there avowed, and then the Tenant had disclaimed, there the Lord had no remedy, for a *Writ of Right of Disclaimer* he could not have had in so base a Court (quære), And therefore to take away these mischiefs, that Stat. of Westm. 2. cap. 2. hath now ordained, that after such Disclaimer, the Lord may remove his Plea into the King's Court, where upon every Plea he shall have his Remedy, &c. which Stat. of Westm. 2. is in these words following. Forasmuch as Westm. 2. Lords of Fees, distreining their Tenants for services due unto them, were many times grieved, because their Tenants did Replevy the distresses (by *Writ* or without *Writ*) And when the Lords at the Complaint of their Tenants did come (by Attachments) into the County (or other Court, &c.) and did avow the taking of the distress to be good and lawful, by reason that the Tenants did disavow to hold ought of him which

which took the distress, and avowed it, He that distressned was amerced, and the Tenants went quit (and punishment cannot be there assigned for such disavowing, &c.) It was therefore by the same Statute ordained, that where such Lords cannot obtain Justice in the Counties, (and such Courts) against their Tenants, as soon as they shall be attached at the sute of their Tenants, a Writ (sc. a Recordare or Pone) shall be granted, to them to remove the plea, before the Justices, before whom, and none other, (where Justice may be administered, unto such Lords) and the cause shall be put in the Writ, because such a man distressned in his fee for his services and customs to him due, &c. P. Repl. 2.

Recordare.

*Comment que les parols de former stat. de Westm. 2. sont, Quam cito attachati fuerint, uncore leSeignior poet ceo auxi remover devant ascun attachment, & cy redymment come le plee est commence; Car intant que al Common Ley le plt. puiffloit aver remove le plee sans cause, la Averwant auxi que est actor & in lieu dun plt. puiffloit aver ceo remove. Et sic ore per ceo stat. le Seignior poet remove le plee, cybien come le tenant puiffloit devant al Common Ley: Mes le Seignior ne poet remove le plee sans cause, lou le tenent poet sans cause, &c.*

*Et nota, que ascun cause que voet inducer favour, ou hatred, est sufficient; Come si un des parties soit Seignior del Court, soit de Kin al party, ou si fa-vear, &c. Vide anters causes per Remover. Registr. fol. 84.*

Also because it chanced sometimes that the Tenant after he had replevied his Beasts, would sell them away, or drive them far off, where by Retorn could not be made unto the Lord that distrained, if it were adjudged, and if the Sheriff had retozned upon the Writ de Retorno habendo, quod averia elongata sunt, &c. then the Lord might have had a Withernam, to have so many Beasts of the Tenants, &c. But if the Tenant had no Beasts, &c. then the Lords were without remedy, It is therefore provided by the same Statute, That Sheriffs and Bailiffs from thenceforth should not only receive of the Plaintiff pledges for the pursuing of the sute before they make deliberance of the distress or beasts taken; but also pledges for the retozn of the beasts, if retozn be awarded; And if any take pledges otherwise, he shall answer for the price of the beasts; and the Lord that distressned shall have his Recovery by Writ, that he shall restore or deliver unto him so many Beasts or Cattel; And if the Bailiff be not able to restore or satisfie, his superior (sc. the High Sheriff, or he which made him Bailiff,) shall restore or pay it: (P. Repl. 3.) 13 E. 1. c. 2.

*Plegii de prosequ.  
De Retorn habendo.*

Co. Lit. 145. b.

Vide Br. Detinue 6.

*Et semble que le recovery in ceux cases serra per brief de Detinue, sc. si les Pledges ne sont suffic. ou autrement nient accordant al stat. &c. respondeat Vicecomes, &c. de precio averiorum, &c. sc. in brief de Detinue port vers luy, &c. il delivra al auter tants des avers come ils fuer de queux il suit d'aver retorno. Tamen per alios ceux parols n'ont tiel intendment, que s'ils ne retorne suffic. Pledges de Prosequendo, que action serra done vers le Vic. mes que si le Vic. ne retorne suffic. pledges de Prosequendo, que per ceo le punissement serra come s'il al Common Ley, sc. Amerciament, Et que ceux parols ont relation solement al Pledges de Retorno habendo, Vide Br. Pledges 1.*

*Issint ceo stat. de Westm. 2. cap. 2. icy provide, que lou avant divers foits les beasts fuer esloigns, que ore Pledges serra de Retorno habendo; Et per ceo si al jour del retorne d'estre fait, les beasts sont esloigne, le Vic. poet aver son remedy envers le Pledges. Lectur.*

*Mes si le Vic. ne prender pledges de averiis returnandis, &c. & l'auter esloigne les beasts, donq; le Vic. ou bayliff responder pur le price del beasts, &c. ut supra.*

*Sed per ascun opinions, le Vic. n'est tenu de recevoir ou prender tiels*

K k k

pledges

pledges en aucun autre replevin, sinon tantum ou le suit on controversy est perenter le Seigneur & son Tenant pur Rents ou services ; mes si soit pur damage feasant, le dit stat. ne tiel dit. quere.

And note, that these Pledges ought to be sufficient as well in Estate as in Law ; for if they be poor in Estate, or if they be insufficient in the Law (as within age, women covert, or persons outlawed, &c.) the Sheriff must answer it : And yet if one of them be sufficient, it seemeth to be well enough. Lectur.

Also ther must be at the least two Pledges named, as well de prosequendo, as de retorno habendo, for that the Statute in both Cases fait h Pledges ; so that if the Sheriff shall return only one to be a Pledge de prosequendo, and one other de Returno habendo, the Sheriff shall answer according to the form of the Statute.

But if such Pledges shall be sufficient at the first, although they shall afterwards happen to be impoverished, or to die, or to be outlawed, &c. yet the Sheriff is excused. Ibidem.

*Le remede que le Vic. ad vers les Pledges dicitur estre per un Scire facias en le quel ils serra compel, ou de pleader chose en discharge, ou de render le value des avers ; mes pur eux adire, que ils ne fuer Pledges, ils ne serra rescieve, car contra al return del vicount. Ibidem.*

*Mes si le suit ou Replevin fuit en le County per Pleint devant le Vic. dicitur que in Banco Regis, ne in Common Bank Vic. navera Scire fac. vers les Pledges : Et ideo vide si le Vic. ne poet causer le party en tiel case de fuer per brief, & donque de trover Pledges in Chancery ou le brief est sue, ou de trover les Pledges la ou le Returne est d'estre ewe.*

*Comment ceux Pledges retorne per le Vic. ne serra receive adire que ils ne fuer Pledges enconter le returne, mes que ils seront charges si les avers sont Esloigne, unc' en apres ils averont brief de Disceit envers le Vic. per cause que il ad retorne eux per Pledges de un tiel lou ils ne fuer unqs ses Pledges, Et ils recover leur damages de tant que ils ne fuer grievé, & indamage. Lectur.*

If the Sheriff shall receive or take £ 1. or any other sum of Money, or any other thing in or for a Pledge of the Return, this is not good, but he must take Pledges (or Sureties) for the Return. And so of Pledges de Prosequendo. Ibidem.

But yet at this day the Sheriff, or the Bailiff in the Sheriffs name, doth use to take a Bond of the party to whom the Replevin is granted for the prosecuting of the suit, and also to make Return, &c. the form of which Bond you may see hic postea.

Note, that as soon as the Return of the Cattel is awarded to him which did distrain the same, the Sheriff shall be commanded by Writ, to make Return of the Cattel to the party which took the distress, Stat. 13 E. 1. c. 2. Westm. 2. 1.

*A ceo jour sur le brief de Returno habendo, si le Vic. retorne quod averia Elongata sunt, la isserra un Withernam, &c. Et si le Vic. retorne Nihil habet, donque isserra 3. Capias, & un Exigent.*

*Apres Returne del beasts, &c. agard, & retorne de eux fait, si le partie Replevie eux arere, &c. Vide plus le stat. de Westm' 2. c. 2.*

Deputies.

Also by another Statute made in the times of King Philip and Queen Mary, for the more speedy delivery of Cattel, taken by way of distress, it is further enacted, That every Sheriff shall depute and appoint four Deputies (at the least) in his County to make Replevies, and deliverance of such distresses, in such manner and form as the Sheriff may and ought to do. 1 & 2 Ph. & Mary. M. c. 12.

So then (although by the Common Law the Sheriff could not make Replevies, or deliverance of any distress, without the King's Writ, as is shewed before, Dyer 246. yet) now by force of these former

former Statutes, the high Sheriff himself, the Under-Sheriff, or any other of the Sheriffs Deputies, (appointed as aforesaid) upon complaint made to them, or any of them, by any man that hath his Beasts or other Goods taken, and wrongfully withholden or impounded. And upon Pledges found de prosequendo & de Returno habendo. &c. may without any Writ to them directed, (in all places) make Replevies, and may presently deliver the Distress (sc. the Beasts, or Goods so taken and withholden :) And also the Sheriff may hold Plea thereof, and determine the same in the County Court. *Sans Brevé.*

Britt. f. 4.

But then the Sheriff, &c. is to give day unto both the Parties, until the next County Court: At which day the Plaintiff may be essoined if his Pleint be entered; But if he make default, then the Defendant may demand Judgment of the Nonsuit, and shall have Return of the Distress; And the Plaintiff and his Pledges shall be in misericordia.

But the Defendant may not be essoined at the first day; For if he make default, then the Distress shall be awarded to the Plaintiff, and the Defendant in misericordia.

And if both the Plaintiff and Defendant shall appear at the first day (either in person or by Attorney,) then the Plaintiff ought to count, or put in his Declaration in writing against the Defendant.

Vid. Bract.  
l. 3. c. 37.

Or else the party may have a Writ (sc. a Justicies) (out of the Chancery directed) to the Sheriff; whereupon the Sheriff or his Bailiff known, and sworn, (after sureties or pledges found, &c.) ought to go to the pound, &c. and to deliver the beasts or goods impounded to the party, and to give day to the parties, ut supra. *Per Brevé.*

But when a man sueth a Replevin by Writ to the Sheriff, he ought presently to enter his Pleint before the Sheriff in the next County, Fitz. 78. a.

Note, where the Replevin is by Pleint in the County Court, it shall not proceed if any thing touching the Freehold come in question, Fitz. 70. b.

Also where it is by Writ upon the Pluries not served by the Sheriff his power is determined, and the Parties shall plead in Bank. 2 H. 7. 6.

If the Sheriff, or his Bailiff be disturbed in the Execution of this Writ, they may levy a power, &c. and may take such disturbers and imprison them.

And if the Bailiff shall return that the party will not suffer the deliverance to be made, the Sheriff (whether it be before him without Writ, or by Writ) may of his own authority award an Attachment, and after a Distingas, until he comes in; and if, (when he cometh in) he be convicted, he shall make a Fine to the King before the Sheriff (ut dicitur) and this seems to be by force of the Statute of Marl. cap. 3. Lectur.

Britt. 54.

But if the Beasts or Goods be in an House, so as the Sheriff or Bailiff cannot come by them; or be driven or carried into another County, &c. then may the Sheriff take of the Goods, or Beasts of the Defendant (to the double value) in Withernam; See hic antea Bract. lib. 3.

Fitz. 77. c.

Vide plus hic  
c. 70. Fitz.  
propriet. probanda.  
l. 1. a. 5.  
Co. Lit. 145.

But if the party that took the Goods, do claim property in them in the County, then the power of the Sheriff, or his Bailiff ceaseth and determineth, so as they may not replevy or deliver them, whether it were by Pleint, or by Writ; but the other party ought to sue his Writ De proprietate probanda. Vide Fitz. propriet. probanda 4.

Note, that the Servant may not claim property for his Master. For an Estranger cannot claim property; but that the Sheriff ought to make

make deliberance notwithstanding the strangers claim; and may make deliberance notwithstanding the servants claim.

But one Defendant may claim property.

Note also that upon property found for the Plaintiff, the Sheriff shall make deliverance, and then also upon sureties found by the Plaintiff de prosequendo, the Sheriff shall also attach the Defendant to answer as well the King as the party: Fitz. propriet' proband' 3. Dyer 173. & Register f. 83. accord. Et per 8 Co. 60. a. le defendant que claim proprietie fauxment, &c. serra fine & imprison, mes ceo serra per les Justices in Banco, & nemy per le vicount. See hic cap. 73.

Upon a Replevin directed to the Sheriff if the Defendant claimeth property, the Sheriff may not make deliberance, but must return, Quod defendens clamat averia, &c. esse sua. And then upon the Writ de Proprietate probanda, the Sheriff in his County Court, and before the Coroners, shall impanel a Jury, to enquire, (in presentia partium if they will) of the property (sc. to whom the property at the time of the taking was.) And if the property be found in the Defendant the Plaintiff shall be Amerced by the Sheriff. And if it be found that the Defendant had nothing in the Cattel or Goods, then he shall yield damages to the Plaintiff and shall also by the Justices be committed to prison, there to remain until he hath paid a Fine to the King; and the Sheriff may presently attach the Defendant, hic antea tit. Replevin.

Note that in a Proprietate probanda, the Jury are not to enquire but only to, or in whom the property was at the time of the taking. Fitz. Proprietate probanda 5.

Also if the Defendant claims property, where the trial is (in the County Court) by Pleint, the Plaintiff may have a Writ de Proprietate probanda to the Sheriff, to try the property; and if thereupon it be found for the Plaintiff, then the Sheriff is to make deliberance; and if it be found for Defendant, then the Sheriff can no further proceed. Co. L. 145. Vide plus la.

And in such case the very title of the Cattel or Goods shall be tried, and given in Evidence before the Sheriff. Fitz. Propriet. 5.

*Nota que sur cest brief de Proprietate probanda, le party poet challenge le Jury. Quere.*

*Auxi sur le verdit del Enquest, Atteynt poet estre sue.*

Mes ceo brief de Proprietate probanda ne gist, ou ne serra grant sinon lou le Replevin est sue per brief. Et nemy ou est sue per pleint: Auxi ne serra grant sinon sur Retorn del Vic. Fitz. Propriet. prob. 4. Auxi dicitur que si un come bayly al un auter claim property a son Maistre que per cel claim le Vic. ne lessera per faire le deliverance, pur ceo que sur ceo claim la ne issera ascun brief de Proprietate probanda, Et que nient obstant un claim de property, que le vic. fera le deliverance, sinon lou sur le claim brief de Proprietate probanda issent: Et lou un come bayly al auter claim property, nul brief issent de Enquiver de ceo, & le cause est pur ceo que si soit trove que son Maistre n'avera nul property, le Maistre alleroit al prison, & feroit fine al Roy, &c. le quel seroit mischievous, que le Maistre serra fine & imprison pur un faux claim de son servant. Et sic nota que nul brief de Proprietate probanda issent, Ne le Vic. tergera de faire deliverance, sinon cestuy a que droit le property est claim, soit party al brief. Lectur. Tamen vide 11 H. 4. f. 4. Fitz. Propriet. probanda 1. & hic antea & Quere.

Repleg.

If a man sue a Replevin in the County, by Plaint without Writ, and the Sheriff maketh his Precept to the Bailiff to make Replevy, and the Bailiff returneth to the Sheriff at his next County, that he cannot have the view of the Cattel to make deliberance, &c. or that they be Ccloigned, Then the Sheriff at the same County

9 E. 4. 8. 48.  
Fitz. 74. b. c.  
Westm. 1. c. 17.

Fitz. Wither.  
2 & 10.  
N. Br. 45.  
See Fitz. 119.

County Court ought to enquire thereof by an Enquest (of Office.) And if this be found by Enquest, that the Cattel be esloigned, (or conveyed away &c.) then the Sheriff in the same County Court may award (ex officio) a Precept in the name of a Capias in Withernam, directed to his Bailiff, to take the Beasts of the Defendant, &c. or else the Plaintiff may have a Writ out of the Chancery to this purpose. Fitz. 74. b. c. & le Register 81, 82.

But whether the Beasts of the Defendant, being taken in Withernam, shall be delivered to the Plaintiff, or that the Sheriff shall keep them, &c. may be a question: It appeareth by the words of the Writ (of Withernam out of the common place) that the Sheriff shall keep them, until the Sheriff can make Replevy and Deliverance to the Plaintiff of his Cattel, and so is the Book, 2 H. 4. Fitz. Wither. 3. that the Sheriff shall keep them: And yet by the use of the King's Bench they shall be delivered to the Plaintiff, and to have them until his own shall be restored to him again. Fitz. 73. f. & 74. a. b. d. Dyer 59. & 189. & Finch 119. & le Na. br. 45.

And therefore where the Sheriff in his County Court shall award a Withernam, quare, if there the Sheriff may not either keep the Cattel himself, or deliver them to the Plaintiff (to keep until, &c.) at his pleasure: And whether the Sheriff or Plaintiff shall have the keeping of them, it seemeth reasonable that the Defendant shall also pay for the keeping of them before he hath his Cattel again.

For the form of this Precept from the Sheriff to the Bailiff, to take the Beasts of the Defendant in Withernam (although in other cases the Sheriffs command to his Bailiff by word only sufficeth, as you may see hic cap. 22.) yet this Precept must be by writing, and ought to be ensealed with the seal of the Sheriffs Office. Vide 22 H. 6. f. 40.

But the Sheriff upon complaint made to him of Cattel taken, &c. may command his Bailiff by word of mouth, to make Replevy of them: *Command per parol.* and it is as good, as if it were by a precept in writing; for there a more speedy delivery of the Cattel is required, And perhaps the Sheriff, nor his Bailiff have any thing about them wherewithal to write, &c. Fitz. 69. e.

*Si homo sua Replevin de potts & panns, Withernam ferra des auters biens al value, 31 E. 3. Fitz. Wither. 9. See hic cap. 80.*

*Vicount in pais agard un Withernam a prender al value, & nemy al Number. Vide Fitz. Wither. 7. & 10.*

*Vicount bien agarder Withernam sur plaint avant luy in pais, Et ceo sur Elongata Retorne per son Bailiff; Mes covient primes de enquirir per enquest, si le Retorne del Bailiff soit voier, &c. Fitz. Wither. 2, & 10.*

Fitz. 17. p.

*Le proces sur cel Withernam, est Alias & Plur. & sic infinite. Fitz. 74. p.*

Now where the Pleint in the County Court is of *prisel des avers*, (i. e. of taking and withholding Cattel or other Goods,) the Entry must be made in this manner, or the like following:

*I. S. Queritur versus I. D. de placito Captionis, & injuste detentionis a-  
veriorum ipsius I. S. contra vad. & pleg. Et invenit plegios tam de clamore  
suo prosequendo, quam de averiis suis returnand. si Retorn' inde adjudicetur,  
sc. Johannes Denn & Richardus Fenn.*

And in this Pleint of *prisel des avers*, the Precept to attach the Defendant must be to this effect following.

*The Form of a Replevin.**Replevy.*

A. B. Miles Vicecomes Com. præd. ballivo hundred. de H. nec non Jo. Cantab. S. ballivo meo hac vice & eorum utrique, conjunct. & divisim salutem, Quia W. P. invenit mihi sufficient. securit. tam de clam' suo prosequendo, quam de averiis suis (*viz.* una spadone, tribus equis sive uno bove, &c.) quæ Jo. C. cepit & injuste detinet, ut dicitur retorn', si retorn' inde adjudicetur, Ideo ex parte Domini Regis vobis & utrique vestrum conjunctim & divisim mando, quod repl' & deliber' fac' præfat' W. P. averia sua præd. (sive bovem præd.) Et quod ponat' seu, &c. per vad', & salvos pleg' præfat. J. C. Ita quod sit ad proxim' Com' meum apud Castrum Cantab. tenend', ad respondend' præfat' W. P. de placito captionis & injuste deten', aver' suor' præd. Et qualiter, &c. Mihi ad proximum Com. meum certificet' seu, &c. sub periculo incumbente, Dat' sub sigillo officii mei, Ultimo die Julii Anno Regni Domini nostri Jacobi Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis fidei defensor, &c. *viz.* Angliæ, Franciæ & Hiberniæ vicesimo & Scociæ quinquagesimo sexto.

Per me A. B. Milit. Vic'.

*Or thus :*

A. B. Miles Vicecomes Com. præd. Ballivo hundred' de Radfield, Necnon B. C. ballivo meo hac vice itinerante, &c. Ex parte Domini Regis vobis & cuilibet vestrum conjunctim & divisim mando quod deliberari facias, R. D. averia sua quæ K. W. cepit & injuste detinet contra vad' & pleg. ut dicitur. Et pone per vadios & salvos plegios præd. K. W. quod sit ad proximum Comitatum meum apud C. tenend' die, &c. ad respondend' præfato R. D. de placito prædicto, &c.

And if this Replevin be granted by a Deputy, to the Sheriff, then he must set his Name to the Replevin, Thus ;

Per me I. A. unum deputat' dicti Vic' secund' formam Statuti.

*Mes le Vic. (ou son Deputy, &c.) devant cel Precept fait, doit prendre (Obligation, ou Pledges, &c.) suffic. security del Plt. de prosequendo, & de Returno habendo si, &c. (ut supra) auserment le Vic. render al avowant le value del avers replevy, si retorne fuit agard. Le forme del Obligation & Condition sequitur icy.*

*Si le Vic. (ou son Deputy, ou Bayliff) retorne pur Pledges certain persons, lou ne sont nul tiels, la il est sicome il ad receive ou retorne nul Pledges, Et in tiel case le Vic. &c. serra charge de render al avowant les avers ou biens, ou le value del eux, ut supra.*

*Si le Vic. retorne Pledges, lou revera ils ne fuer' Pledges, ou ne ont consent, uncore dicitur que le Seigneur, &c. avera Scire fac. vers eux, (& que ils ne serra receive adire que ils ne fuer' Pledges, enconter le retorne del Vic.) Et que ils serra charge si les avers, &c. sont esloyne : Et apres ils poient aver leur brief de Disceit envers le Vic. pur retourner eux Pledges, lou ils ne fuer' revera ; Et in ceo ils, recover' leur damages vers le Vic.*

*Mes si l'avowant sua Scire fac. vers les Pledges, il nevera remedy apres vers le Vic. ou auter Officer.*

Now by force of the former Precept of Replevin, the Bayliff must go to the place where the Cattle, &c. whereof the Pleint is persued be within the Shire, and shall deliver the Cattel to the Plaintiff :  
And

And also shall attach the Defendant to appear at the next County Court to answer to the Plaintiff in his Pleint.

This Attachment of the Defendant must be made by the Officer of the Defendant's Goods; and the Goods so attached the Officer may keep in his own possession until the next Court, or the Officer may suffer the Defendant to replevy the same by two Pledges, &c. in such manner as is before declared, and as he may do in a Plea of Debt or Trespass.

When the Replevin is sued, and the Goods delivered, and then the Plaintiff becomes Nonsuit in his Pleint, if the Defendant be ready in Court to avow the taking, then shall there be awarded to the Defendant. *Retorne des avers*, in this manner following.

*Retorne des Avers.*

*A. B. Miles Vic. Com' præd. ballivo Hundred' de R. &c. Quia R. D. averia & catalla quæ W. B. cepit, &c. virtute Querimonie suæ inde præsens fac. replegiare fuer. Non est prosecut' querelam suam prædictam, Sed ad Comitatus meum tentum apud C. die &c. exact. default. fecit, per quod per considerationem ejusdem Curie adjudicat. fuit prædicto W. B. Return' averior' & catallor' prædict' quæ præfato W. B. absque Breve Domini Regis de Judicio deliber' non possunt, Ex parte Domini Regis tibi mando quod præfato W. B. de averiis & catallis illis retorn' fac'. Datum sub Sigillo, &c.*

And thereupon the Officer shall deliver to the Avowant the first Distress.

And if the first Replevin be not executed, then the Sheriff or his Deputy may grant an Alias Replevin, and so a Pluries Replevin, vel causam mihi significes; and after toties quoties, if need be.

*An Alias Replevin.*

Cantebr.

*A. B. Miles Vicecom' Com' præd' ballivo hundred' de R. Necnon I. S. ballivo meo hac vice, &c. Quia W. P. invenit mihi sufficient' securita- Alias Repl. tem tam de clamore suo prosequendo, Quam, &c. (ut supra) Ideo ex parte Domini Regis vobis, & utrique vestrum conjunctim & divisim mando, sicut alias vobis mand' averia præd' (sive bovem prædict') eidem W. P. sine dilatione replegiare fac', seu unus vestrum repleg' fac' vel causam mihi significet, vel unus vestrum signif. Quare mandata mea vobis inde directa exequi noluiti aut non potuistis. Et quod ponat' seu unus vestrum ponat per vadios & salvos pleg' præfat' Io. C. Ita quod, &c. (ut supra.)*

And if the Bailiff do not deliver the Plaintiff his Cattel upon this Alias Replevin, nor shew sufficient cause why he did not, then the party may have a Pluries Replevin, which must be made Verbatim, as the Alias Replevin was made, only changing this word Alias into Pluries.

And so note, that upon all these Replevins, there must be security given by Pledges, or else a Bond (of ten pounds at the least) taken of him to whom the Replevin is granted, for his appearance at the next Court after, and for the prosecution of his suit, and to make return of the Cattel, if return be adjudged.

*The form of which Bond and Condition must be as followeth.*

*The Obligation.*

**N**Overint universi per presentes me Wil<sup>m</sup> P. de C. in Com. C. Gen. teneri & firmiter obligari A. B. Milit<sup>is</sup> Vicecom. Com<sup>is</sup> præd<sup>icti</sup> in decem libris bonæ & legalis monetæ Angliæ solvend<sup>um</sup> eidem Vic. aut suo certo Attornat<sup>o</sup>, Executor<sup>i</sup> vel Administrat<sup>ori</sup> suis. Ad quam quidem solutionem bene & fideliter faciend<sup>um</sup>, obligo me, Hæredes, Executors & Administratores meos firmiter per presentes, Sigillo meo sigillat<sup>um</sup> Dat<sup>um</sup> &c. (as all other Bonds are.)

*The Condition.*

**T**HE Condition of this present Obligation is such, That if the above bounden W. P. do appear at the next County Court to be holden at the Castle of Cambridge, and then and there do prosecute his Action with effect against I. C. for wrongful taking and detaining of his Cattel, viz. of one Gelding and three Horses, as is alledged, and do also make Return thereof, if Return thereof shall be adjudged by Law, and also do save and keep harmless and indemnified, the above named Sheriff, his Under-Sheriff and Bailiffs, for, touching and concerning the delivery of the said Cattel, That then this present Obligation to be void and of none effect, or else the same to stand, remain and continue in full force, strength and vertue.

*Recordare.*

And if in this case the taker of the Cattel do justify the taking, as in his Freehold, then the County Court can proceed no further therein; but the cause must be removed from thence by the King's Writ (out of the Chancery) called a Recordare facias loquelam, directed to the Sheriff, returnable the next Term following, either into the King's Bench, or into the Court of Common-Pleas which the Party will; and then this Writ of Recordare ought to be openly read and allowed in the said Court, to the end that notice may be given thereof to the Plaintiff in the Replevin, that he may appear at the day of the return thereof, and declare against the taker of his Cattel, or else the taker will have a Retorno habend<sup>um</sup> averior<sup>um</sup>, to the disadvantage of the Plaintiff.

*Mes soit le plee pendant en le County Court per brief, ou sans brief, le def. ne poet remover cel plee del Replevin, hors del County en Banco, sans surmise en le Pone, ou Recordare; Et pur ceo il est use a faire surmise en le brief, & le brief dit, fiat Executio istius brevis si causa sit vera, & aliter non. Plowd. 208.*

*Auxy per cest removalment de plee, rien serra remove, forsque le plee, & le Avowry; mes le Proces, & continuance de ceo, ne serra remove.*

*Et si al jour que ils aver per prefixion en le brief que remove le plee, le def. soit absent, Attachment & Distress isserra, & per default sur ceo proces de Uclary: Mes si celui que ne remove le plee face default, un garnishment isserra, Et sil ne appiert Retorne serra agard, &c.*

*Authority del Court.*

Now concerning the Authority of this Court and of the Sheriff, &c. therein.

If a man be convicted befoze the Sheriff and the Coroners (in his County Court) in a Writ of Recaption, the Sheriff may amerce him deeply or grievously, and also may award damages to the party; but the Sheriff can impose no Fine in this Court upon any Offender, for that no Court can impose any Fine, but such Courts as are Courts of Record, whereas the County Court is no Court of Record. 8 Co. 41. & 60. & 11. 43. Fitz. 73.d. Old N. Br. 45.

<sup>8</sup> Co. 41, 42.  
& 60. b.

Si le Signeur prift excessive distrefs (come x. boeffs pur ij. s. de rent, &c.) & de ceo le tenant fait son Pleynt en le County Court, & le Seigneur ceo confefs, semble il serra amerce la, per force del Statut de Marlebr. cap. 4. Auterment est ou le Signeur distreyne pur homage, fealty, ou suite; ou pur damage fesant: En le premier case le Signeur ne serra amerce, pur ceo que les services ne sont apportionable, ne valuable. Br. Distr. 2. 36. 79. & 80.

Mes si le Signeur ne poet trouver un auter distrefs sur le terr, forsque distrefs que amount al 40 s. pur rent de ij. s. la il ne serra amerce.

Si le Signeur distreyne son tenant pur damage fesant, ou pur son rent, suites, ou services, & enchase les beasts hors del County, semble que il serra amerce, per force del dit Statut de Marl. cap. 4. vide Br. Distrefs. 37. & 54. & Fitz. Barr. 120. & Distr. 1. 16.

Si home soit Non suite en le County Court, il serra Amerce la.

Issint del defend serra amerce in ascun suit sue vers luy (en le County Court) si ceo soit trove vers luy. Kitch. 112.

Issint ou le defend fault de faire sa Ley al jour que a luy est done, en ascun pleynt sue la vers luy. Statham 12. R. 2. fol. 65.

Mes si tiel Amerciements sont outragions, ils avera brieve de Moderata misericordia, & ceo per le Statut de Mag. Chart. cap. 14. Fitz. 75. f.

Et semble per mesme le Statut que tiel Amerciements in le County Court serra assere per Pares. *Or rather it seemeth now by the Statute of 11 H. 7. cap. 15. that Two Justices of Peace shall first view the Extrems of the Amerciements of the Sheriff, and that the same Extrems must be Indented between the said Justices, and the said Sheriff, and sealed with their Seals, before that the Sheriff (or his Officers) may Levy the same Amerciements.*

*Furors summon al County Court, s'ils ne appeare (mes font default) ils serra amerce, sinon que assers appeare sur mesme le Pannel.*

*Auxi nota, quod de quolibet placito quod in Comitatu deducitur & terminatur. Misericordia quæ inde provenit Vicecomiti debetur, quæ quanta esse debeat per nullam assisam generalem determinatum est; sed pro consuetudine singulorum Comitatum debetur, in quodam Comitatu plus, in quodam minus. Glan. lib. 9. c. 10.*

*Uncore brief de moderata misericordia gift, lou home est amerce in le County Court (ou in auter Court Baron) de plus que doiet d'aver estre amerce & nul ayant regard al quantity del trespass, & si le vic. ne moderate le Amercement poet suer brief Sicut alias, & apres Attachment gift vers le vic. & apres distr. ou proces de Utlary, &c. N. Brev. 47.*

*Et tiels Amercements serra auxi assise per pares, ayant regard al quantity del trespass. Ibid. & Stat. Mag. Charta, cap. 14.*

*Also (it seemeth) that if any Contempt or Disturbance to the Court be made before the Sheriff, or Steward, in the County Court, they may amerce such Offenders, for such Contempt or Disturbance. But such Amercement needeth not to be assised: For whereas the Statutes of Magna Charta, c. 14. and of Westm' 1. c. 6. will, Quod nemo amercietur nisi secund' quantitatem delicti, which cannot be known but by assising, yet it seemeth, that the Statutes, and this assising are to be understood for Amercements set or imposed for Offences committed or done out of Court, and not of Contempts, or Misdemeanours, done or committed in Court,*

Court, before the Judge or Steward there; who having conformance thereof, and of the manner and quality of the Offence, are the moze meet to impose, tax, and assess such Amercements for such Offence, and so much Amercement to be in the nature of a fine imposed (by the Sheriff or Steward) upon the Offenders. See 10 H. 6. fol. 7. Br. Amercement 50. & Co. 8. 41. Fitz. 75.

And for an Amercement in the County Court, the Sheriff may distrain throughout all the County. 2 H. 4. Br. Dist. 13. And shall have all such Amercements to his own use, as it seemeth. See hic cap. 124.

*Imprison.*

But the Sheriff may not imprison one, nor arrest, nor take the Writ by upon the Writ de Nativio habendo, &c. (Br. Faux Imprif. 30.) nor in any other Suij, nor for any Contempt or Offence done in the County Court, as it seemeth. Fitz. 132.  
c. 133.  
Regist. 153.

*Recog.*

The Sheriff in his County Court may take a Recognisance to pay another a certain Sum of Money at a certain Day, and if it be not paid at the Day, the Conusee may have a Writ de Executione facienda, out of the Chancery to the Sheriff to make Execution thereupon, and to Levy the Money de bonis & catallis of the Defendant. *Et in tiels Cases semble que le vicount poet vender les biens le partie, pur payer le Conusee :* Fitz. 133. b. vide le viel Na. Br. 67. & Register 153.

And this is where there is a Plea of Debt depending in the County Court before the Sheriff, between two, either of the Parties may there acknowledge a Recognisance (before the Sheriff) to the other Party, of any Sum of Money (as it seemeth) and that whether the Plea be there depending by Writ, or without Writ, as Pastur Fitz. held.

Also if a Man will come into the County Court before the Sheriff, and there in Court will acknowledge to owe or pay a certain Sum of Money to another Person at a certain Day, &c. when there is no plaint of Action depending there between the Parties, it seems by the Opinion of M. Fitz. that such Recognisance is good, if it be under the sum of forty Shillings. Fitz. 133. a. And the Party shall have the King's Writ de si Recognoscat, directed to the Sheriff, to make Execution of such a Recognisance. Ibid.

And by this Writ de si Recognoscat the Sheriff may distrein until the Cognisfor hath made gree to the Party for the Debt. Na. Br. 67.

*Le forme del dit briefe al vicount pur faire execution.* Vide Register 152. Fitz. 133. b. N. Br. 67.

*Mes il semble per le dit briefe de Si Recognoscat, que si le recognisfor ne voile recognostre le det arere devant le vicount quant il vient a luy de faire execution, &c. mes dire que il ad ceo pay, &c. que donque le vicount per le dit briefe ne poet faire execution de ceo. Auxi illud briefe non fit nisi de pecunia numerata.* N. br. 67. Fitz. 133. b.

And yet Mr. Brook, tit. Recog. 16. & 18. seemeth to doubt, whether the Sheriff at this day may take a Recog. in his County Court, it being no Court of Record; especially except the Recog. be taken upon a Plea depending there before the Sheriff by a Writ of Justices, in which case the Sheriff is a Justice by Commission, for that the Justices is a Commission to him; and all Commissioners who have Authority to sit in Justice for the Commonwealth, may take a Recog. as appeareth here before. Cap. 27.

*Auxi quant al ascum matters, le County Court est Court de Record.* Vide hic cap. 4. & 111.

Again in a Writ of Right depending in the Lord's Court, the Sheriff, at the Request of the Defendant, may grant a Tolt to remove the Plea into the County Court. Fitz. 3. f. 4.

C A P.

## C A P. CXIV.

Finch 115.

**K** Rights for the Parliament, } their Election is always made by the King's *Knights del Par-*  
 Coroners, and Verderers, } Writ, (directed to the Sheriff) and made in *liament, esley*  
 } the open and full County Court. Fitz. 63. *al Countie.*  
 } 64.

And these must all be chosen by the Freeholders of the same County. (Fitz. 163. k. 164. c.) And to be published there.

And the Sheriff is to return and certify into the Chancery, every such Election (of the Knights, Coroners, and Verderers) and the Names of those which are so chosen to any of these places. Fitz. 163. k.

See hic antea fol.

The Knights for the Parliament are to be chosen between the Hours of Eight and Eleven of the Clock, in the Forenoon, and Sedente Curia; and being so chosen, are also to be published there by the Sheriff.

The Names of such Freeholders as are at the Election of Coroners, *Coroners &* and Verderers, ought to be set down in the County Court Book for to certify such their Election. *Verderers.*

And yet the Coroners their Election also may be by Voices, or by holding up Hands, &c. (as the Knights of the Parliament, whereof see hic antea fol.) and then their Names or Number cannot be certainly known nor set down. Pl. 126. a.

Also the Sheriff is to minister unto the Coroners and Verderers, their several Oaths for the due Execution of their Offices. Fitz. 163. m. 164. c.

When the Coroner is chosen, the High Sheriff of the same County, *The Coroners* or his Under-Sheriff, must give him his Oaths, as followeth. *Oaths.*

First the Sheriff shall give the Coroner his Oath to the Supremacy.

The Form of which Oath. See hic antea fol.

Then the Sheriff must give the Coroner his Oath concerning his Office, as followeth.

The Coroners were anciently Knights. See Register 177. b. & Stat. Westm. 1. cap. 10.

There be commonly four Coroners in every County.

There be certain special Coroners within divers Liberties.

There is also the Coroner of the King's House.

The several Offices of every of these Coroners. See Minsh.

*The Form of the Coroner's Oath, for the due Execution  
 of his Office.*

**Y**OU shall swear, That you well and truly shall serve our Sovereign Lord the King's Majesty, and his liege People, in the Office of a Coroner: And as one of his Majesty's Coroners of this County of *Cambridge*: And therein you shall diligently and truly do and accomplish all and every thing and things appertaining to your Office, after the best of your Cunning, Wit, and Power, both for the King's profit, and the good of the Inhabitants within the said County, taking such Fees as you ought to take by the Laws and Statutes of this Realm, and not otherwise: So help you God, and the holy Contents of this Book: *And so let him kiss the Book, to affirm his Oath.*

The Coroners are Judges of the Outlawries, and are to sit with the Sheriff at every County Court, there to give Judgments upon

upon the Outlawries (as appeareth before, cap. 110.) And they are to give, and pronounce the Judgment, and to make a short remembrance thereof in their Book; but the Coroners are not to make Return of the Outlawry: For the Custody of the Record it self doth not appertain to the Coroners, but the Sheriff is to have the keeping thereof, and of the Exigent, which is the Sheriffs Warrant to Proclaim the Judgment, and which Record, with the Exigent, the Sheriff is to return into the King's Bench, &c. Dyer 223. Finch 116.

And the Sheriff shall have Counter Rolls with the Coroners, of all things belonging to the Office of Coroners, Stamf. 64. Fitz. Coron. 186. See hic cap. 100.

The Forms of the King's Writs for the choosing of the Coroners and Werderers. See in the Register, fol. 177. & Fitz. 163, 164.

The Form of the Werderers Oath. See

The Effect of the Werderers Oath is to this purpose.

They are sworn to maintain and keep the Assizes, (sc. the Orders, and Ordinances) of the Forest, and to view, receive, and intoll the Attachments and Presentments of all manner of Trespassers of the Forest, of Wret, and Wenison. Minsh. vide Rastal. tit. Forests, div. 16. & 21.

In the time of the Fence-Month, or Fawning of wild Beasts of the Forest, at the Court of Swainmoot then holden, these Werderers are the Judges of that Court, and are to direct all the other Officers of the Forest in their Course, &c. Mr. Manwood, fol. 74.

At other times their Office is properly to attend the Wret, and to see that it be well preserved and kept. Crompt. Author des Courts 165.

Vert, this Word taketh that Name, a viriditate, of Greenness, and in Latin it is called viridis, whereof this word viridarius, a Werderer cometh, sc. one who doth take the Charge of the Wret. Manwood fol. 37.

And the word Wret doth comprehend every thing that doth grow, and bear green Leafs within the Forest, that may cover and hide a Deer in it, and more specially such Woods, Trees, or Bushes, as do bear Fruit, which is Food for the Deer in Winter (as Acorns, Apples, Crabs, Sloes, and Hawes, &c.) Manw. 6. 33. & 35.

Also Proclamations are openly to be made by the Sheriff, &c. in his full County Court, in divers Cases.

1. First upon receipt of the King's Writ for summoning the Parliament.
  2. Upon receipt of the King's Writ for Levying the Expences of Knights of the Parliament.
  3. In Cases of Outlawry.
  4. Upon Process against Persons Indicted, or Appealed, dwelling in a Foreign County.
  5. Upon a Writ de Excom<sup>o</sup> Capiendo.
  6. In Cases of Riots certified into the King's Bench.
  7. Upon the Grand Distress, in Writs of
 

}	Admeasurement.
}	Defne.
}	Ward.
- See more fully for every of these, hic antea, cap. 102.

## C A P. CXV.

Now concerning the Sheriffs Officers, *sc.* his Under-Sheriff, Clerks, Deputies, Bayliffs of Hundreds, and Gaolers.

**I** Will here first set down what Security is commonly taken by the High-Sheriff from his said Officers: And then certain general Observations or Rules concerning them all; and after I will treat more particularly of every of them by themselves.

First, It is meet and safe for the High-Sheriff, to take good Security for his Under-Sheriff, and other Officers, before he trust them with their Offices: And for this, commonly the High-Sheriff taketh Bonds and Covenants of the Under-Sheriff and Friends; as also of his Bayliffs, and Gaoler.

*The Form of an Indenture between the High-Sheriff,  
and his Under-Sheriff.*

W. 9. 10.

Quere, if this be not contrary to the Sheriffs Oath, Artic. 12. and contrary to the Stat. See hic cap. 2. & 3.

**T**His Indenture made, &c. between R. O. of in the County of Cambridge, Esquire, on the one Party; and R. H. of G. in the said County Gent. of the other Party, witnesseth, That whereas the said R. O. being by the King's most Excellent Majesty appointed to be High-Sheriff of the said County of Cambridge, and of the County of Huntingdon, for this Year to come, hath upon special affiance, confidence, and trust, that he hath, and beareth in and towards the said R. H. promised and granted to the said R. H. the use of the exercising of the Office of his Under-Sheriff of the said Counties, together with all Fees, Profits, Commodities, Advantages, Casualties, Allowances, and other Emoluments, certain and uncertain whatsoever, to the Office of Under-Sheriffwick, belonging, or in any wise appertaining, that any (*Quere* what these be in particular, else they may much wrong the High-Sheriff) Under-Sheriff of the said Counties, hath thereof justly and lawfully claimed or had, to have and enjoy during, and by all such time as he the said R. O. shall be, remain, and continue High-Sheriff of the said Counties, this Appointment or Election not discharged. In consideration whereof the said R. H. covenanteth, granteth, and agreeth, and faithfully promiseth for him, his Heirs, Executors, and Administrators, that he the said R. H. his Heirs, Executors, and Administrators, shall, and will discharge, or otherwise sufficiently save, and keep harmless, as well the said R. O. his Heirs, Executors, and Administrators, as also his and their, and every of their Goods, Chattels, Lands, Tenements, and Hereditaments of, and from all, and all manner of Troubles, Vexations, Suits, Actions, Informations, Complaints, Contempts, Fines, Forfeitures, Amerciaments, Penalties, Pains, Sum and Sums of Money payable, or leviable to, or for the King's Majesty, or any other Person or Persons whatsoever, for any matter, or thing to be done, in or about the said Office. And of and from all, and all manner of Losses, Hindrances, and Damages, that shall or may be lawfully moved, stirred, procured, commenced, prosecuted, happen, or fall, or lawfully asked, demanded, or levied upon the said R. O. his Heirs, Executors, or Administrators, or of, or upon his or their, or any of their Goods, Chattels, Lands, Tenements, or Hereditaments, for or by reason of the said Office of Sheriff, either by Non-returning, or unlawful Returning, slow Returning, or Misreturning of any Precepts, Writs, Warrants,

*Les Profits.*

*De savor harm-  
lesse general-  
ment.*

*Extortion.**Escape.**A doner Attendance.**De faire son Account.**Leur bailiffs.*

Warrants, or Proceſs to the High-Sheriff directed, or to be directed; or for, by cauſe or means of any exceſſive or unlawful Extortion, or Exaction, or taking of any Money, or other Gain, or Commodity for the ſerving or not ſerving of any ſuch Writs, Warrants, Precepts, or Proceſs, or for, or by reaſon of any Miſdemeanor, Miſuſing, or Miſgovernment, Negligence, lack of Skill, or of Ignorance that ſhall be in the ſaid *H. R.* in or about the doing, exerciſing, or executing of the ſaid Office of Under-Sheriff. *And* the ſaid *H. R.* for himſelf, his Heirs, Executors, and Adminiſtrators, by theſe Preſents doth further covenant and grant to, and with the ſaid *R. O.* his Heirs, Executors, and Adminiſtrators, in like manner to diſcharge, or otherwiſe to ſave harmleſs and indemnified as well the ſaid *R. O.* his Heirs, Executors, and Adminiſtrators, as alſo all their Goods and Chattels, Lands, Tenements, and Hereditaments, of and from all manner of Eſcapes, both wilful and negligent, of Traitors, Felons, and all other Priſoners committed, or to be committed to his or their ſafe keeping, or charge, from Breach of Priſon, and of and from all Fines, Forfeitures, Amerciaments, Sums of Money, and Penalties, that he or they, or any of them, ſhall or may incur, bear, pay, or ſuſtain, for any Eſcape or Breach of Priſon, during all the time of his continuance in the ſaid Office of High-Sheriff, of his appointment. *And* moreover, the ſaid *H. R.* ſhall give attendance convenient and requiſite, upon the King's Courts at *Westmiſter*, upon the Judges of Aſſizes, and Juſtices of Peace, and other Commiſſioners and Officers within the ſaid County, upon whom the ſaid *R. O.* or the ſaid *H. R.* in reſpect of the ſaid Office of Sheriffwick ought by the Laws of this Realm to attend. *And* furthermore, ſhall within one Year next after the Diſcharge of the ſaid *R. O.* from his ſaid Office, juſtly and truly make a perfect Account in the King's Exchequer, or elſewhere, of all the Sums of Money, Receipts, and other things, wherewith the ſaid *R. O.* ſhall or may be charged as Sheriff of the ſaid Counties of *Cambridge* and *Huntingdon*, and ſhall within the ſaid Time or Year, deliver unto the ſaid *R. O.* his Heirs, &c. a ſufficient Acquittance, or *Quietus eſt*. *And* it is further agreed upon by the ſaid Parties to theſe Preſents, that every one of the Bailiffs of Hundreds, and alſo other the Officers under the Sheriff, ſhall enter into ſufficient Bond by Obligation, that they, and either of them ſhall truly and diligently deal in, exerciſe and execute their Offices during the time aforeſaid. *And* if any ſhall reſuſe to enter Bond, or ſhall miſdemean himſelf in his, or their ſaid Office, that then it ſhall be lawful to, and for the ſaid *H. R.* in his diſcretion to place another meet for that Office, in the room of ſuch Perſon that ſhall reſuſe to enter Bond, or ſhall miſdemean himſelf, as is aforeſaid. In witneſs whereof, &c.

*Another Form of Indenture between the High-Sheriff  
and his Under-Sheriff.*

West. Pl. 75.

**T**His Indenture made, &c. between F. S. Sheriff of the Counties of Cambridge and Huntingdon, Esquire, of the one Party; and A. G. of, &c. on the other Party, witnesseth, That it is covenanted, &c. that is to say, the said F. doth by these Presents ordain, constitute, depute, and make the said A. G. his Under-Sheriff in the said Counties of Cambridge and Huntingdon. And to have, occupy, and enjoy the said Office of Under-Sheriff there to the said A. G. during all such time as the said F. shall continue and be in Authority of the Office of the said Sheriff of the said Counties of Cambridge and Huntingdon, by Virtue and Authority of our said Sovereign Lord the King's Majesty's Letters Patents of the Office of Sheriff there to him directed, bearing date, &c. *And Les Profits.* also that the said F. doth by these Presents grant, &c. to the said A. that he shall and may take and have during the said Term, all manner of Fees, Rewards, and Profits lawfully to the said Office of Under-Sheriff, (learn what these be) or for serving, executing, or returning of any manner of Writs, Warrants, Precepts, or Process in the said Counties of Cambridge and Huntingdon, belonging or appertaining. *Le Gaole.* And the said F. doth by these presents, grant, assign, and depute to the said A. the lawful ordering, custody, and government, of all and singular manner of Gaols, Prisons, and of the Prisoners now, or hereafter to be therein, to be lawfully and duly ordered, kept, and demeaned, by the said A. or his Deputy, or Deputies, Servant or Servants, during the said Term that the said F. shall have the said Office, or the custody, order, or government of the said Gaols, Prisons, and Prisoners, by Virtue and Authority of the said Office of Sheriff, and Letters Patents aforesaid. *De sauver harm-  
less.* In consideration whereof, the said A. doth by these Presents grant, &c. to, and with the said F. that he the said A. and his Assigns, shall at all and singular time and times, from time to time after the date of these presents, conserve, discharge, exonerate, save harmless, and acquit the said F. his Heirs, Executors, Administrators, and Assigns, and every of them, (and the Sureties of them, and every of them) of, for, and from all, and all manner of Forfeitures, Payments, and Fines, Pains, Penalties, Amerciaments, Charges, Losses, Issues, Damages, Incumbrances, and Demands whatsoever in any wise, in any Court or elsewhere, to be set, assessed, paid, or sustained, suffered, or had to our said Sovereign Lord the King's Majesty, his Heirs, and Successors, or to any other Person or Persons in any wise, for, or upon any Escapes, Executions, or Returns of Writs, Commissions, Privy Seals, Proclamations, Process, Precepts, Seals, and Warrants, by any ways, manner, or means to, or upon the said F. for, upon, or under the said Office of Sheriff in any wise directed, named, or had for any Act, Matter, Default, Office, or thing to be committed, done, neglected, or suffered, perpetrated, or had by the said A. or any of his said Servants, Ministers, Deputies, or Assigns, during the time that the said A. shall continue in his said Authority or Office, or any of them: *De faire ac-  
compt.* And also the said A. in Consideration aforesaid, doth by these Presents grant, &c. that he the said A. shall duly pay, enter into, make perfect, finish, acquit, and discharge, for, and in the behalf of the said F. in the King's Court, now commonly called the Exchequer, and elsewhere, all and singular, and all manner of Profits, Rents, Debts, Duties,

Duties, and Demands, Accounts, Costs, Charges, Fees, Recognisances, and Bonds, for and upon the said Sheriff, or any of his Sureties, or by reason or means of the said Office of Sheriff, of, and in the said Counties of *Cam.* and *Hunt.* or of any Officer, or Minister, of the said Sheriffs Office, in any wise due or demandable, during the time that the said *F.* shall have the said Office of the said Sheriff of the said Counties of *C.* and *H.* or to be accountable thereof: *And* that the said *A.* shall duly, lawfully, and in convenient time, by himself, or his Assigns, bring unto the said *F.* his Heirs, Executors, or Administrators, his, and their lawful Acquittance and Discharge, for the Accounts and Duties of the said Sheriffs Office of the said Counties of *Cam.* and *Hunt.* for the time that the said *F.* shall have been Sheriff there by the said Letters Patents. *Also* the said *A. G.* doth by these Presents grant to, and with the said *F.* that the said *A.* shall well, and worshipfully, make, provide, sustain, and maintain at all, and singular times (during the time that the said *F.* shall have the said Office of Sheriff of the said Counties of *C.* and *H.* by force or virtue of the said Letters Patents) convenient and competent Meat, Drink, Lodging, Food, Sustenance, and Entertainment, for the Justices of Assizes, Justices of Gaol Delivery, and the Clerk of the Assizes, and for all and for every of their Clerks, Ministers, and Servants, and for the Horses of them, and every of them, and for all other Attendants at, and about the said Justices of Assize, or Gaol Delivery, at, or within the said Counties of *Cam.* and *Hunt.* during the time and times of their Assize, at and by the oversight and appointment of the said *F.* or such other Person, or Persons, as the said *F.* shall thereunto nominate and assign. *Provided* always, and it is granted and agreed by these Presents between the said *F.* and *A.* that the said *A.* or any other Person in his behalf, shall not make or return any other Pannel, Jury, or Inquest, for, in, or upon any Writ of *Venire Facias*, or of any other Process pursued, directed, or had, during the time of the said Sheriff of the County of *Cam.* and *Hunt.* out of any of the King's Majesty's Courts, commonly called the Chancery, the King's Bench, Common Place, or Exchequer, unless the same Pannel, Jury, or Inquest shall be confirmed with the Hand of the said *F.* or some other Party that he shall nominate or appoint. *Nor* that he the said *A.* nor any other Person in his behalf, shall in any wise do, or cause to be done, without the special License of the said *F.* first obtained, and plainly had done or appointed, any Act, Matter, or any thing upon any Writ, Commission, Action, Presentment, Judgment, Indictment, Process, or Suit, that in any wise, manner, or means, shall be, for, or against any of the Earls of, &c. or any of them; or, for, or against any other Person or Persons, that is, or hereafter shall be known or declared to the said *A.* by the said *P.* to be his Friend. *And* it is also provided and agreed by these Presents between the said *F. S.* and *A. G.* that the said *F.* shall, and may make, ordain, constitute, and appoint from time to time, during the time of his Office, by the said Letters Patents, such Persons, which during that time shall have, occupy, and enjoy the two Bailiwicks, and Offices of Bailiffs, of, and in the Hundreds of *R.* and *C.* and either of them, with the Appurtenances in the Counties of *Cam.* and *Hunt.* aforesaid, and that the same Persons shall have, take, occupy, and enjoy the said Bailiwicks, and either of them, together with all, and singular manner of Profits, Commodities, and Advantages, with the Appurtenances appendant to the same Bailiwicks, or either of them in any wise concerning, growing, belonging, or during the time, over and besides that shall be to the King's Majesty, any thing in these Presents contained to the contrary in any wise notwithstanding. *And* the said *A.* doth moreover grant by these Presents to the said *F.* that the said *A.* and his Assigns shall

*De procurer son  
discharge.*

*De entretenir  
les Judges, &c.*

*Pour Retorne les  
Jurors, oue le  
privy del vic.*

*Et executer pro-  
ces, &c.*

*Leur Bailifes.*

shall in due and convenient time, as shortly and conveniently as may be after the time of the said Office ended, account and declare to the said *F. S.* or his Assigns, at the said Mannor of, &c. the true value and Rent of all and singular Rents, Revenues, Duties and Forfeitures, due to be paid, and then levied or leviabie to the King's Majesty's use or behalf within the Counties of *C.* and *H.* for, upon, in, or by the said Office of Sheriff there during the time that the said *F.* was, as is aforesaid Sheriff there, and so much of the Rents, Revenues, Duties and Forfeitures that the said *A.* or his Assigns, shall pay, or cause to be paid then to the said *F.* as the same *A.* or any other person to his use then hath received, and all the residue of the said Rents, Revenues, Duties and Forfeitures there, which conveniently shall be levied, the same shall cause to be paid to the said *F.* or his Assigns, so shortly and speedily as may be after that time they shall be conveniently levied and gathered there: And the said *A.* doth by these Presents covenant and grant to and with the said *F.* &c. that he the said *A.* his Executors, and Assigns, shall within forty days next after the said accounts for the said Office of the Sheriff of the Counties of *C.* and *H.* finished, determined, pay or cause to be paid well and truly to the said *F. S.* his Executors or Assigns, all manner of Allowances, Profits or Commodities and Advantages that in any wise shall be admitted, deducted or allowed in the Account or Accounts, or by any part thereof in the said *Exchequer*, for the Diet of any the Justices of Assises or Gaol, or any of their Clerks, Servants or Attendants in the said County; or for any Summons of *Præcipe*, or of any green Wax, or of any such like matter, or thing in the said Shires of *C.* and *H.* And also the said *A.* doth by these Presents grant to the said *F.* that he the said *A.* at least in one day in every of one and twenty days, during the time that he shall be Under-sheriff, as is aforesaid, and personally be in or near unto the said Counties of *C.* and *H.* shall come thence unto the said *F.* and on that one day utter and declare the state of the Counties of *Cam'* and *Hunt.* and the affairs concerning the said Office, with the Appurtenances thereof. And that also the said *A.* with all his Officers and Ministers, and Power of the said County, shall duly and diligently attend to the said Office in any War, Rebellion or other notable matter or occasion during the time of the said Office shall arise, or be in the said County or thereabouts: And also that the said *A.* shall well and diligently, honestly and justly occupy, serve and execute the said Office of Under-sheriff of the said County, and honestly behave himself in all points, during all the time that the said *F.* shall continue, and be High-sheriff of the said Counties of *C.* and *H.* by virtue of the said Letters Patents, and nothing done by himself, or any other person or persons in any wise concerning the said Office of Sheriff or Under-sheriff of the said Counties of *C.* and *H.* which shall be to the prejudice of the said *F.* And also that the alterations of matters, articles and things in these Presents in any wise mentioned or contained, may and shall be reformed, and had at any time from time to time, by the learned Counsel of the said *F.* for the better and more perfect discharge and saving harmless of the said *F.* his Heirs and Executors by these Presents, by, and in all things to obey, perform and fulfil. In witness whereof, &c.

*De attend' le  
Vic. chescun 3.  
semaine.*

*Possé Comitatus.*

*Bene se gerere.*

*Another Condition of an Indenture of Covenant, &c.  
See my other Book, & hic fol. 209. & scribe hic.*

*Bonds.*

**T**HE Bonds are commonly taken of the Under-Sheriff and his Sureties, for the performance of these former Covenants: And they are ordinarily as all other Bonds are for the performance of Covenants: And they are in this manner following, or the like.

*A Condition to perform Covenants.*

**T**HE Condition, &c. That if the within bounden T. F. do well and truly hold, perform, observe, fulfil and keep all and singular Covenants, Grants, Articles, Payments, Provisoes and Agreements, which on the part and behalf of the said T. F. his Heirs, Executors, &c. or any of them are to be holden, performed, observed, fulfilled, or kept, contained, written, declared or specified in one pair of Indentures bearing date, &c. made between the said T. F. of the one party, and the within named T. T. of the other party, according to the tenure, purport, true intent and meaning of the said Indentures; That then, &c.

*A Condition to pass an Account, to procure a discharge  
for a Sheriff.*

**T**HE Condition of, &c. That if the above bounden T. F. his Heirs, Executors and Administrators do make a true and perfect account of and for the abovenamed T. T. his Heirs and Executors, in the Exchequer of our Sovereign Lord the King, and the Heirs and Successors of the said King, of, for and upon all Issues, Charges, Sum and Sums, which is or shall be charged or demanded of, or upon the said T. as late Sheriff of the said County, and to get and procure a sufficient *quietus est* thereof, for the said T. T. his Heirs and Executors. And moreover do well and truly discharge, save and keep harmless the said T. T. his Heirs, &c. against our Sovereign Lord his Heirs and Successors, and all other person and persons, of, for and concerning the said Office of Sheriff, and all the Receipts and Charges thereof, That then, &c. W. Pl. 215.

*A Condition for a Bailiff to enter into, to the Sheriff.*

**T**HE Condition, &c. That whereas the above named Sir T. B. at the special instance and earnest intreaty of the above bounden I. P. hath authorised and appointed the said I. P. to be one of his Bailiffs within the County of C. abovesaid, and in more particular hath committed to his Charge the Bailiwick of the Hundred of M. and B. if therefore the said I. P. and all such persons, &c. for and about the executing of such things as shall be given him in charge to do and execute as Bailiff of the Hundred, do justly, &c. execute his said Office according to the effect and intents of such Warrants and Precepts as shall be directed unto him, and come to his hands from the above named Sheriff, or from his Under-Sheriff to be executed, and shall

shall and do upon the View of every Warrant upon the mean Proceſs from the ſaid Sheriff, take ſufficient Bond with two Sureties for the appearance of the Defendant arreſted, according to the Statute in that caſe made and provided. And ſhall ſafely convey and deliver every ſuch Bond uncanceled unto the ſaid Sheriff or his Under-ſheriff, before ſuch time as the Proceſs whereupon the ſaid Warrant is made is returnable. And alſo at all times, and from time to time, during the continuance of the ſaid Sheriff in his Office of Sheriff of the ſaid County, be ready and attendant both upon the ſaid Sheriff, and upon his Under-ſheriff, as well at every Aſſizes and Seſſions, as alſo at every County Court to be holden, &c. then and there to execute his ſaid Office as appertaineth; And alſo ſhall well and truly pay, or cauſe to be paid to the ſaid Sheriff or his Under-ſheriff, at the Feaſts of *Eaſter*, and Saint *Michael* the Archangel now next coming after the date of theſe preſents, all and every ſuch Sum and Sums of Mony as hath been accuſtomed yearly to be paid to the Sheriff of the ſaid County for the King's Majeſty out of the ſaid Hundreds upon the account of every Bailiff of the ſaid Hundreds, commonly called, *Sheriff's Torne-Mony*. And do in like manner before the ſaid Feaſt of Saint *Michael*, collect and gather of the Inhabitants within the ſaid Hundreds, all Sums of Mony due to his Majeſty, upon the Summons and Schedules of the green Wax, a ſufficient Warrant being in convenient time delivered unto him, to that end and purpoſe, and do accordingly pay the ſame to the ſaid Sheriff, or to his Under-ſheriff, within one month next after he hath gathered and collected the ſame, without covin or further delay.

*Un auter President del grant del Office de South  
Vic' de avoid le danger, ore, de Perjury, &c.*

**T**HIS Indenture made, &c. Between *I. S.* Sheriff of the County of *C.* &c. of the one part, and *B. C.* &c. of the other part, witneſſeth, that the ſaid *I. S.* upon the ſpecial aſſance, truſt and confidence that he hath in the ſaid *B. C.* and of his faithful circumſpection, care and due obſervance hereafter to be ſhewed and beſtowed to me, in the Office and place of High-Sheriff of the County of *C.* for and during all the time that I the ſaid *I. S.* ſhall be in the ſaid Office, Do by theſe Preſents ordain, conſtitue, &c. as is *fol. 531*. And Profits lawfully to the Office or place of Under-ſheriff belonging or appertaining, *Ibid*. In conſideration whereof the ſaid *A. B.* doth by theſe Preſents, for himſelf, his Heirs, Executors and Adminiſtrators, covenant and grant to and with the ſaid *I. S.* his Heirs, Executors, &c. That he the ſaid *A. B.* and his Aſſigns ſhall, &c.

1. Save the ſaid High-ſheriff, &c. harmleſs.
2. To make Account in the *Exchequer*  
And procure the High Sheriffs diſcharge.
3. To return Juries, with the Privy of the Sheriff.
4. To execute no Proceſs, &c. of weight,  
ſc. without the Sheriffs Privy.

Ut hic fol. 529, 530,  
531, 532.

Ut fol. 532.

fol. 532.

*Mes adviſe de ceſt Covenant.*

5. To Accompt to the Sheriff,  
And to attend the Sheriff. } 531, 533.
6. To be ready to aid the Sheriff, &c.
7. For his good Behaviour in his Office. } fol. 533.
8. To take or use no Extortion.
9. To give attendance at the King's Courts. } fol. 530.

*Another Condition to exercise a Bailiwick.*

**T**HE Condition, &c. That if the within bounden *I. A.* shall well and truly exercise and occupie the Office of the Bailiwick of the Hundred of *Ch.* under the within named *E. T.* being Sheriff of the said County of *Cambridge*, and be ready and attendant to the said Sheriff and his Deputy, at all times when he shall be required in executing his said Office of Sheriffwick, and discharge and save harmless the said Sheriff against our Sovereign, &c. and all other persons for executing of all manner of Process, Precepts, Warrants, and Commandments to be directed, executed and done by the said *I.* and of all Prisoners as shall be in his custody: And well and truly content and pay to the same Sheriff, his Executors or Assigns, all the Issues, Revenues and Profits of the said Hundred, whereof the certainties amount to the Sum of four pounds, by the Confession of the said Bailiff, to be paid duly at the Feast of *Easter*, &c. And also levy, content and pay to the said Sheriff, all such green Wax, Pipe Silver and Issues, as the said Sheriff shall be charged withal within the said Hundred, and shall be estreated out to the said Bailiff to gather, to be paid the said Sheriff before the said Feast of, &c. That then, &c.

W. Pl. 227.

Issues, &c. del  
hundred.

*A Condition for a Gaoler to enter into for the safe keeping of his Prisoners.*

**T**HE Condition, &c. That whereas the within named *Sir H. W.* at the special instance and request of the within bounden *W.* hath constituted and appointed the said *W. W.* to be his Keeper of all such Prisoners as shall be arrested or attached by any manner of Writ, Warrant or Precept made, or to be made, by, or in the name of the said *Sir H. W.* or by or in the name of *I. W.* his Under-Sheriff; If therefore the said *W. W.* his Deputy or Deputies, Assignee or Assignees, or any of them shall and do well and safely keep all such Prisoners as shall be committed unto him or them, or any of them, and therein shall save and keep harmless and indemnified the said Sheriff, his Heirs, Executors and Administrators at all and every time and times hereafter, of, and from all, and all manner of Escapes, of all manner of Prisoners that shall be committed to the custody and safe keeping of the said *W. W.* or left under the custody or charge of any of his Deputies or Assigns: And of and from all, and all manner of Judgments, Executions, Fines, Charges, Troubles and Incumbrances whatsoever which shall or may hereafter grow or happen to be taxed, imposed, estreated or levied upon, of or against the said Sheriff, as Sheriff of the County aforesaid, for and by reason of any such Escape or

or Escapes as aforesaid: And also if the said W. W. his Deputy or Assignee shall not discharge or set a liberty out of his or their custody and safe keeping any Prisoner or Prisoners which now are, or that hereafter shall or may be by the said Sheriff, or by his Under-Sheriff or Deputy, or by any of their Bailiffs, taken, committed, delivered or left in the custody of the said W. W. his Deputy or Servant, without the special Warrant in writing under the hand and seal of the Officer of the said Sheriff in that behalf first had and obtained, that then, &c.

Concerning these or the like Bonds to be taken by the Sheriff or his Officers, See hic antea cap.

27 Eliz. c. 12.  
P. Sheriffs 32,  
33.

Every Under-Sheriff before he intermeddle with the use or exercise of the said Office, and all and every Bailiff of Franchise, Deputy and Clerk of every Sheriff, and Under-Sheriff, and all and every Wapstiff of Hundred, and every other person and persons which shall have authority, or take upon him to impanel or return any Enquest, Jury or Tales, or to intermeddle with the Execution of Process, in or out of any Court of Record, before he or they intermeddle with Execution thereof, shall receive and take two corporal Oaths upon the holy Evangelist; The one for and concerning the King's Supremacy, in such manner as is expressed by the Statutes made 1 Eliz. cap. 1. & 5 Eliz. cap. 1. And shall also within three months after the taking upon them their Office, take the Oaths and Test appointed in a late Statute made in the Reign of King Charles the Second.

*Le serement.*

The other Oath, for and concerning the true exercising of their Office, the form whereof is as followeth.

**I** Henry Sl. shall not use or exercise the Office of Under-Sheriff (Bailiff, Deputy or Clerk, or other such words convenient for the Office, or place in which the party which taketh the Oath is to be exercised in) corruptly during the time that I shall remain therein; Neither shall or will accept, receive or take by any colour, means or devise whatsoever, or consent to the taking of any manner of fee or reward of any person or persons for the impanelling or returning of any Enquest, Jury or Tales, in any Court of Record, for the King, or betwixt party and party, above two shillings, or the value thereof, or such Fees as are allowed and appointed for the same by the Laws and Statutes of this Realm, but will according to my power truly and indifferently with convenient speed impanel all Jurors, and return all such Writ or Writs touching the same, as shall appertain to be done by my Duty or Office, during the time that I shall remain in the said Office.

*Le serement concernant l'office.*

So help me God.

27 El. c. 12.

These Oaths are (by the said Under-Sheriff, Bailiffs, and other Officers) to be taken before the Justices of Assize, or one of them, of the same Circuit, or before the Custos Rotulorum, or two Justices of the Peace (one of them being of the Quorum) of the same County whereof the said Under-Sheriff, Bailiff or other Officer shall be. The other Oath and Test must be taken only in the Courts of Chancery and King's Bench in Term time, and at the Quarter-Sessions of the Peace, and not elsewhere.

27 El. c. 12.

If any of the said persons limited to take the Oath aforesaid, do take upon him to impanel, or return any Enquest, Jury or Tales, or to intermeddle with the Execution of Process, not having before taken the Oaths aforesaid, every such person shall forfeit 40 l. the one moiety to the King, the other moiety to him that will sue for the same.

27 El. c. 12.

If any Under-Sheriff, or other person here above mentioned in this

this

this Act, shall do or commit any Act or Acts contrary to the Oaths aforesaid, or either of them, or contrary to the true intent and meaning of this Act, every such person so offending shall forfeit for every such offence to the party or parties grieved, his, or their treble damages,

All the several Forfeitures before mentioned, shall or may be recovered in any of the King's Courts of Record by Action of Debt, Bill, Plaint or Information, in which Sute no wager of Law, Essoign or Protection shall be allowed. 27 El. 12.

Also the Judges of Assise and Justices of Peace in their open Sessions, may hear and determine the Offences aforesaid, upon Presentment, Information or Indictment, and upon conviction of the Offenders may award Execution (for to levy the Forfeitures) by Fieri Facias, Attachment, Capias or Exigent. 27 El. 12.

Also the Head-officer of the place, if it be a Town Corporate, wherein such Bailiff, or other Under-officer shall be, may take the said Oaths of such Officers, before they shall or may exercise their said Offices. 27 El. 12.

*Oath of Allegiance.*

Also by the Statute made 7 Jac. Regis c. 6. every Officer or Minister of Justice (within which words the Under-Sheriff, Bailiff, Sheriffs Clerk, and Deputies seem to be comprehended) is to take the Oath of Allegiance, if they be of the age of eighteen years or above, and that it be lawfully tendered to them. 7 Jac. 6.

*For collector the shire amercements.*

Bailiffs and others the Sheriffs Officers shall be sworn by the Justices of Peace, that they shall gather no more of the Shire Amercements than is forfeited, and contained in their Estreats sealed by the said Justices. See hic antea tit. County Court fol. 11 H. 7. c. 12.

*No serva Attourney.*

No Under-Sheriff, Sheriffs Clerk, Sheriffs-receiver, nor Sheriffs Bailiff, shall be Attorney in any of the King's Courts during the time that he is in any such Office with any Sheriff; and the Sheriff is bound to have a care hereof, and to prevent the same, as well by the Statute as by his Oath. 1 H. 5. c. 4.

*Not above one year.*

No Under-Sheriff, nor Sheriffs Clerk shall abide or tarry in his Office above one year (except the Under-Sheriff, and Officers within London, &c. See infra) upon pain to forfeit two hundred pounds yearly, as long as such person shall occupy such Office contrary to the effect of the said Statute; and every man which will may sue for the same. See hic antea fol. 42 E. 3. c. 9.  
23 H. 6. c. 8.  
6 H. 8. 18.

Also every Pardon made for such offence shall be void; besides the High-Sheriffs Oath seemeth to bind him from having such an Under-Sheriff.

*The mischief.*

The mischief of such Officers continuing long in their Office, or interchanging out of one of the Offices into another, is observed (in the Preamble of another Statute made 1 H. 5. c. 4.) to be, that the King's Liege People durst not complain of the Exortions, and Oppressions done to them by the Sheriffs Officers (that is to say by Under-Sheriffs, Sheriffs Clerks, Bailiffs and Receivers) by reason thereof; and therefore it was by that Statute ordained, That Sheriffs-Bailiffs should not be in any such Office by the space of three years next following: But quere for the use thereof; for at this day in most places Sheriffs Bailiffs do continue in their said Offices from year to year, for divers years together: And also Under-Sheriffs and Sheriffs Clerks in many places also do continue in their said Offices many years together, interchanging from the one into the other; By reason of which continual being and continuing in the said Offices, the Under-Sheriff, Sheriffs Clerks, and Bailiffs, grow so running in their several places, as that

*Bailiff; ne serva deus 3 ans.*

that they are able to deceive, and may well be feared that many of them deceive both the King, their High-Sheriff and Country.

23 H. 6. c. 8.  
1 H. 3. c. 18.

And yet the Under-Sheriff, and all other Officers within the City of London, as also the Under-Sheriff, and all other Officers of Sheriffs, within the Shire or County of the Town of Bristol, may continue and occupy their said Offices from year to year, without any danger or forfeiture, notwithstanding the former Statutes of 42 E. 3. 9. and 13 H. 6. 8.

23 H. 6. c. 8.

Also in such Counties in which any persons were inheritable to the Office of Sheriff at the time of the making of the said Statute of 23 H. 6. (viz. 25 Febr. Anno Domini 1444.) And all Letters Patents before the time made to them of the Office of Sheriff, Under-Sheriff and Sheriffs Clerk are excepted out of the said Statutes.

5 E. 4. 3.  
Br. Officer  
24 & 23.

Note, that the Act or Deed of the Under-Sheriff, or his Deputy, in the name of the Sheriff, shall charge the Sheriff; and for their Act the Sheriff himself shall be amerced and none other. 8 H. 4. 20. Ac. fieri. *Vic. amercia pur default ses of- ficiis.*

cordant. See hic antea fol. 69, 70.

*Marsh port action sur le case vers Asty le South Vic. de Hereford, & count quod cum ipse avoit procuree un brief de Entree en le post vers un C. direct al Vic. de Hertf. que il luy Summoner d'appeare devant les Justices, &c. Et que il delivrer le dit brief al dit Asty, & done a luy ij. s. pur ceo Executer, & licet le dit Asty voit Summon le dit. C. uncore il ne retourne le brief avant dit al damage le Plt. xij. Le Def. plede Rien Culp. & fuit trouve encounter luy, per que Coke en arrest de Judgment alledge que l'action serra pert envers le High-Sheriff, & nemy vers le South Vic. & pur ceo il vouch. 21 E. 3. 43. & 19 H. 6. que l'action serra port vers la Vic. que ne Retourne le brief, &c. Issint que per Nonfesans d'un chose le Haut Vic. serra puny, Et le South Vic. pur misfesance. Mes Garwy & Clinch contra, car le action est port pur le fauxity que est solement le act del South Vic. intant que il prist l'argent & ne retourne le brief. Et auxi le South Vic. est ore Officer in Court entant que il est jurus. Et Clinch dit, si un Clerk misfenter un Roll ou Record le Chief Clerk ne serra puny pur ceo, Issint le Haut Steward ne serra puny pur le misdemeanour ou male feasans del South Steward. H. 32 Eliz.*

14 E. 3. c. 10.  
4 Co. 34.

And for the Bailiffs, it is parcel of the Sheriffs Dath to take no Bailiff, but such as he will answer for. And so for the Gaolers or Keepers of the common Gaol and Prison of the County, the Sheriffs must put in such Gaolers or Keepers for whom they will answer; for if there be an escape of a Felon voluntarily suffered by the Gaoler, the Sheriff may be indicted of Felony for the same as it seemeth. And if an escape shall be suffered by the Gaoler, or other Officer, of a Prisoner who is in upon an Execution, the Sheriff shall be charged for the whole Debt.

Lam. v. v. 5. &  
West. M. 1.

#### The Under-Sheriff.

9 Co. 49.

**T**HE Under-Sheriff in ancient time was called Senescallus Viocomitis, and in the Statute of Westminster 2. cap. 39. is first called Under-Sheriff; and in the Statute of 11 H. 7. cap. 15. he is called Under-Sheriff, or the Shire Clerk, or the Clerk of the County. 9 Co. 49. See hic cap. 1. & Minsh. verbo Shire Clerk.

And yet the word Shire-Clerk is sometimes taken to be the Under-Sheriff; and sometimes it is used for a Clerk in the County Court, Deputy to the Under-Sheriff.

These Under-Sheriffs have at this day to them committed by the High-Sheriff the whole, or most part of the exercising and executing of the Office of High-Sheriff, and may be called the Sheriffs general Deputy, (i. e. in matters concerning their ministerial Office.)

Office.) And accordingly by the Book 20 H. 7. the Under-sheriff is said <sup>20 H. 7. f. 12. b.</sup> to be but the High-sheriffs Deputy or Bailiff, and one that useth and occupieth the place or office in the right of the High-sheriff, and doth all things in the name of the High-sheriff.

If it shall come in issue whether he that made the array be Under-sheriff or not, this shall be tried by the Country, and not by examination of the Officer, and the array impannelled and returned by the Under-sheriff in the name of the Sheriff shall bind the Sheriff. <sup>8 H. 4. ro. 20. Br. Officer 33.</sup>

And if a Return made by the Under-sheriff be denied, that shall be tried by the Under-sheriff, and the High-sheriff cannot disavow the same, if he confess him to be his Under-sheriff, 9 Co. 31.

If any Under-sheriff make a Return whereupon the Sheriff shall be amerced, there the High-sheriff shall be amerced, for the Return is made expressly in his Name. But if it be a false Return whereupon an Action of Deceit lieth, in that case it may be brought against the Under-sheriff. Dr. & St. 134.

The substance of this Oath, is, for the true, speedy and indifferent returning of Writs, and impannelling of Juries, without taking above the Fees allowed.

*Their Deputies.*

In Courts of  
Westm.

Every Sheriff shall yearly make a Deputy of Record in every of the King's Courts, of his Chancery, the King's Bench, the Common-Pleas, and in the Exchequer (before that they shall return any Writs) to receive all manner of Writs and Warrants to be delivered them. See hic antea fol. <sup>23 H. 6. c. 10.</sup>

These Writs (as it seemeth) are delivered of Record in Court, to the Sheriffs Deputy, and thereupon an Entry is made thereof in this manner: Memorandum, quod Justic' Domini Regis hic, tali die, isto eodem termino deliberaverunt J. D. Deputat. Vic. Com. præd. quoddam breve Domini Regis nunc clausum eidem Vic. direct. in forma juris exequend. Quod quidem breve idem Deputat' hic in Curia aperuit, Cujus quidem brevis tenor sequitur in hæc verba. *Carolus, &c.*

Every Sheriff of the twelve Counties in Wales, and of the Counties of Lancaster, Chester and the City of Chester, shall have a sufficient Deputy in the King's Bench and Common-Pleas to return all Writs directed to such a Sheriff. <sup>1 E. 6. c. 10. 5 E. 6. c. 26.</sup>

The Bishop of Durham, and during the vacation of the said Bishoprick, the Chancellor of the said County Palatine for the time being, shall have one sufficient Deputy at the least in the said Courts of the King's Bench and Common-Pleas, to receive all Writs of Proclamation directed to such Bishop or Chancellor. <sup>31 El. c. 9.</sup>

Every Sheriff, as also the Bishop or Chancellor of Durham making default herein, shall lose to the party indamaged treble damages, and besides shall forfeit forty pound, the one half to the King, and the other moiety to him that will sue for the same. <sup>23 H. 6. c. 10. 2 E. 6. c. 10. 5 E. 6. c. 26. 31 El. 9.</sup>

Every Sheriff of any Shire (being no City, nor Town made Shire) at his first County-day, or within two months next after he hath received his Patent of his Office of Sheriffwick, shall depose, appoint and proclaim in the Shire-Town within his Bailwick, four Deputies at the least, dwelling not above twelve miles one distant from another (within the County where he is Sheriff) upon pain that every Sheriff for every month that he shall lack such Deputy or Deputies, shall forfeit for every such Offence 5 l. <sup>1 & 2 Ph. & Mar. c. 12.</sup>

4 Deputies pour  
fair Replevies.

Every of the said Deputies so appointed and proclaimed, may in

in the Sheriffs name make Replevies, and deliverance of Distresses, in such form and manner as the Sheriff may, and ought to do.

22 H. 7. f. 37.

The Sheriff may make his Under-Sheriff, Bailiff, and Deputies without any Deed or Writing, by Conesby, Brudnel, and Tremaille. *Sans fait.*

Where the Sheriff cannot make a Deputy : See hic.

## C A P. CXVII.

## Their Bailiffs of Hundreds.

**T**HE Bailiffs of Hundreds, called also Bailiffs Errants, and in our Law, or vulgar Latin called Ballivi itinerantes (id est, going hither and thither in the County to serve or execute Writs, to summon the Assises, the Quarter-Sessions, and the like) are made and appointed by the High-Sheriff.

And these Bailiffs should be such manner of persons, as do know each mans person and Land, in their Hundred, and their ability to serve upon Enquests, that so they may the better summon, or distress them to appear, &c. when they shall be appointed.

But for that Sheriffs may not let their Bailiwicks to farm, therefore when they put in Bailiffs they be but as Under-bailiffs to the King, and the Sheriff is the High-bailiff, and the other the Sheriffs Servants, and therefore he shall answer for them if they offend in their Office. Dr. & St. 136.

14 E. 3. c. 9. Sheriffs shall appoint such Bailiffs for whom they will answer. *Bailiffs.* Vide hic. And for that the Statute is general, it seemeth that he shall answer as well for an untruth in any such Bailiff, as for an oversight. Dr. & St. fol. 135.

And so shall those Lords which have Hundreds and Wapentakes in Fee.

No Sheriffs Bailiffs shall be Attorney in any the Kings Courts during the time he is in such Office. Vide hic.

27 Eliz. c. 12. The Sheriffs Bailiffs are to take the Oaths appointed by the Statute of 27 Eliz. sc. they are to be sworn to the Supremacy, and for the exercising of their Office, sub poena 40 l.

And if they shall commit any act contrary to their said Oaths, they shall lose treble damages, &c.

The form of this last Oath. See hic cap.

But special Bailiffs to serve Process, are not to take the same Oaths by force of the said Statute of 27 Eliz. Crompt. 76.

1 H. 5. c. 4. Sheriffs Clerks nor Bailiffs being in one year shall not be in any such Office by the space of three years after, or next ensuing (except the Bailiffs of those Sheriffs which have inheritance in their Sheriffs wicks) quare for the use hereof at this day.

14 E. 3. c. 9. The Sheriff shall have in his County but one Bailiff Errant only. See the Statute of 14 Ed. 3. 9. and quare of the validity of this Statute this day. For these Bailiffs Errants, called in our Law or vulgar Latin Ballivi Itinerantes (id est, going hither and thither in the County to serve Writs, and such like) are the Bailiffs of the Hundred; and are made and appointed by the Sheriff.

These Bailiffs of Hundreds shall be true and credible persons, and shall have sufficient Lands in the same Shire whereof to answer the King and his People, in case that any man shall complain

R u n

against

against them, and so that they shall not need to use Extortion. 9 Ed. 2. Lincoln, & 2 Ed. 3. cap. 4. 4 Ed. 3. cap. 9. 5 Ed. 3. cap. 4. & 14 Ed. 3. cap. 9.

If the Sheriff shall chuse any man to be his Bailiff of any Hundred or Wapentake, who hath not sufficient Lands in the same County according to the Statutes of Westm. and of 4 & 5 Ed. 3. a Writ shall be sent unto the Sheriff, commanding him to discharge and remove such Bailiff, and to chuse a new Bailiff in the others room; and hereupon any man may have an Alias, Pluries, and an Attachment against the Sheriff, if he shall not do according as he was commanded by such Writ: The form of which Writ you may see in Fitz. Nat. Br. 164. & Regist. fol. 178. So as upon such a Writ the Sheriff may remove his Bailiffs of Hundreds which have not Lands or Tenements sufficient within his County. Register 178. Fitz. 164. b.

Note also that it is parcel of the Sheriffs Dath, to take no Bailiffs but such as be true men, and of sufficient Estate, and such as he will answer for, and to make them to take their Dath for the due Execution of their Office.

And these Bailiffs should also be such, as do know each mans person, and Land, in the Hundred, and their ability to serve upon Enquests; That so they may the better summon or distrain them, &c. to appear when they shall be appointed.

*Counties and  
Hundreds let to  
farm.*

It seemeth that in ancient time all the \* Counties in England were assailed to a certain Farm (sc. were let by the King to every Sheriff at a certain Farm) and then all the Hundreds and Wapentakes in the Sheriffs hands were again by them letten, and were also rated to their Farm, which was an occasion of great oppression; whereupon it was first ordained, that the Bailiwicks of Hundreds should be leased and bailed by the Sheriff for a reasonable Rent, so that the Bailiff need not to use Extortion upon the People by reason of too outrageous Farm: And after by the Statute made 4 E. 3. cap. 15. it was ordained, that Sheriffs should let their Hundreds, for the old Farm (and not above) to their Bailiffs; and by another Statute made 14 E. 3. it was shortly after ordained, that Sheriffs should keep their Hundreds in their own hands, or else should let them upon the old Rent: But since Sheriffs (by the Statutes made 23 H. 6. cap. 10. & 5 & 6 Ed. 6. cap. 16. as also by their Daths) are restrained from letting to Farm any of their Counties, or any of their Bailiwicks, Hundreds, or Wapentakes in any manner whatsoever. \* Sc. the profits thereof. 2 E. 3. c. 12.

No Bailiff of any Hundred shall lease his Office to any other in Farm or otherwise. Stat. de Vic. 9 E. 3.

*Swoyn.*

The Execution of all Writs which come to the Sheriff shall be done by the Hundredors; sc. by the Bailiffs of Hundreds, and such as are known and swoyn in the full Counties, and not by others; if it be not by the open default or notorious disturbance of the Hundredors, sc. unless the Bailiffs of Hundreds will not, or cannot execute them. And then Execution shall be done by other persons meet and swoyn. See the Statute 9 Ed. 2. de Vicecomitibus.

No distress shall be taken, but by a Bailiff swoyn and known: And if any other shall distrain and be thereof convicted, they shall yield damages to the party grieved, and also be punished to the King. 13 E. 1. 73.

And so by the Statute 27 Eliz. cap. 12. No Bailiff of any Hundred, nor other person shall take upon them to execute any Process, &c. before they be swoyn. See hic antea fol.

And yet the common experience and practice at this day is, that  
Special

special Bailiffs, or other persons (being neither sworn nor known Officers) do execute such Writs; And such special Bailiffs are often mentioned in our Books, as in 8 Ed. 4. 14. 21 H. 7. 37. 9 Co. 69. Br. *Monstrans des faits* 117. And they seem to be the more allowed, for that they many times may and do execute the King's Process, when such Bailiffs as are known, cannot, in regard that such as are in debt do usually flee from them, &c.

Bailiffs of Hundreds shall attend upon the Justices of Assises, Justices of Gaol-delivery, and Justices of Peace in every of their Courts and Sessions, (upon warning) See the Statutes 27 H. 8. 24. & 34 H. 8. 26. They shall also duly execute all Precepts and Warrants to them from the said Justices directed for the Ministration of Justice.

See more concerning Bailiffs of Hundreds hic antea tit. County Court.

1 E. 3. c. 4.

Sheriffs and Bailiffs of Fee shall cause their Counties and Bailiffs <sup>Bailiffs of Fee.</sup> Wicks to be kept by such as have Lands therein.

Bailiffs of Fee are Officers of Fee within their Jurisdiction or Precinct; and for the execution of Process there, the Sheriff shall not write or send his Precept to these Bailiffs, as to the Bailiff of a Franchise, but as to the Bailiff of guildable; and the Sheriff shall return his answer, as if the Sheriff himself had served the Process, 27 Ass. Br. Process 98. and the Return also shall be in the name of the Sheriff.

## C A P. CXVII.

### Bailiffs of Franchises.

**B**ailiffs of Franchises or Liberties, are those that be appointed by Lords within their Liberties, to do such Offices within the Precincts of such Lordships or Liberties, as the Bailiffs Errants do at large abroad within the County.

These Bailiffs of Franchises which have Return of Writs, cannot arrest a man without a Warrant or Precept to them made by the Sheriff upon or by force of the King's Writ in the hands of the Sheriff. Kiel. f. 86.

All Bailiffs of Franchises and Liberties, before they intermeddle with the Execution of their Office shall take two corporal Oaths, the one concerning the Supremacy, the other for the true exercising of their Office (sub poena 40 l. See hic antea. <sup>Bailiffs of Franchises four serement.</sup>

A Bailiff of a Franchise or Liberty is an Officer by himself, and hath not to do with the Sheriff. 21 H. 7. f. 23. a.

And yet it is a principal part of his Office, duly to execute all Precepts directed to him from the Sheriff; and to make due Return thereof to the Sheriff. Crompt. 57.

And if the Bailiff of a Franchise, upon the Sheriff's Warrant, shall arrest a man, and shall not return the Warrant to the Sheriff, the party arrested may have his Action of *faux imprisonment* against the Sheriff. But if the Bailiff shall make his Return to the Sheriff, that he hath arrested the party, and hath delivered him to the Sheriff, and then the Sheriff will not return the Capias to the Court, here no Action of false Imprisonment will lie against the Bailiff of the Franchise, for that he hath executed his Warrant and Office well; And the Bailiff of the Franchise is to make his Return to the Sheriff, and not into the Court. Kiel. 87. Vide hic cap. 37.

Bailiffs of Liberties, may bail such manner of persons being

*Pot bailer.*

in their custody, as Sheriffs may; And they may take the like Oblis<sup>23</sup> H. 6. c. 10. gations for the appearance of such persons by them to be bailed.

If the Bailiff of a Franchise shall arrest one by a Warrant upon a Capias to him directed from the Sheriff, yet the Obligation (taken for the appearance of the party) must be made to the Sheriff, and taken by the Bailiff in the Sheriffs Name. 23 H. 6. c. 10.

*Ne serra attorney.*

No Steward, Bailiff, nor Minister of Lords of Franchises which have return of Writs, shall be Attorney in any Plea within the same Franchise or Bailiwick whereof he is or shall be Minister or Officer. 4 H. 4. 19.

Stewards and Bailiffs of Franchises, and their Deputies and Clerks, may keep and enjoy their said Offices for so long time as the same is or shall be given unto them. 27 H. 8. 24.

*Low fees.*

Bailiffs of Liberties shall take such Fees, as the Statutes have set down for the Sheriffs and their Officers; which see hic postea. 23 H. 6. c. 10.

*Low forf.*

All other Statutes made before the 4 Februarii Anno 27 H. 8. for or concerning Sheriffs, or their Under-Sheriffs, Bailiffs or other Ministers (for making or returning any Juries, serving of any Process, taking of Fees, for Excoptions, or for any other thing concerning their Offices) And all Pains and Penalties in every such Statute contained shall be in force against, and extend to, all Stewards, Bailiffs and other Ministers and Officers of Liberties and Franchises, having Returns of Writs and Executions thereof, in like manner as they extend to Sheriffs, Under-Sheriffs, &c. as if the said Stewards and Bailiffs of Liberties, had been particularly named in such Statute, saving that the said Stewards, Bailiffs of Franchises, their Deputies or Clerks, may occupy their Offices above one year, viz. for so long time as they be given to them. 27 H. 8. 24.

Fines and Amerciaments for insufficient Returns (of Writs and other Process) made by the Stewards, or Bailiffs of Liberties shall be set upon the heads of such Stewards or Bailiffs, and not upon the Sheriff. Ibid.

The King shall have all manner of Fines, Issues, Amerciaments and Forfeitures, that shall be forfeit by any Stewards, Bailiffs or other Minister or Officer of any Liberty, for non-execution or mis-execution of any Writ, Warrant or Process to them directed; or for insufficient Returns thereof, or for any contempt or other misdemeanour whatsoever concerning their Offices, in and for the due execution or administration of Justice: P. Prer. 20. Ibid.

*Attender les Judges, &c.*

All Bailiffs and Officers of Liberties (which in time passed have used or ought to attend) shall attend upon the Justices of Assise, Justices of Gaol delivery, and Justices of Peace, of the same Shire wherein such Liberties and Franchises be; And shall make due execution of all Process to them directed for Ministration of Justice within such Liberty. 27 H. 8. 24.

All Lords that have Franchises or their Bailiffs, shall attend upon the Justices of Assise and Gaol-delivery, upon pain of Forfeiture of their Franchises. 20 E. 4. f. 6. Br. Forfeiture 115.

Also all such Bailiffs (or their Deputies) shall attend and assist the Sheriff, together with the Sheriffs Bailiffs, at all Courts of Gaol-delivery from time to time, for execution of Prisoners according to Justice. 27 H. 8. c. 24.

Provided that the Officers of Cities, Burroughs and Towns Corporate, having Priviledges not to attend or appear out of their City or Town, shall not attend elsewhere, but shall enjoy their Liberties and Priviledges. Ibid.

Note, that such Liberties, Franchises, Priviledges, and temporal

ral Jurisdictions, as came to the King by suppression of the Houses of Religion, and by their Grant; And also all such as come to the King by Attainder of Treason, shall be revolved in the King; And the Officers thereof shall be personally attendant to the King's Courts, and shall serve and, execute and return all Process, Precepts, and Warrants, as they ought to have done before they came to the King's hands. 32 H. 8. cap. 20.

4 E. 3. 9.  
5 E. 3. 4.

Bailiffs of Liberties shall have sufficient Lands in the places where they be Ministers, and in the same County, whereof to answer the King and his People, if any will complain against them. *Low sufficiency.*

Regist. 178.

If the Lord of a Liberty shall choose any man to be Bailiff of his Liberty, who hath not sufficient Lands within the same County, then a Writ shall be sent to the Sheriff (of the same County wherein such Liberty is) commanding him to discharge or remove such Bailiff, and to choose another Bailiff in his place. Fitz. 164. 4.

And an Alias, Pluries, and an Attachment lieth against the Sheriff, if he shall not do according as he was commanded by such a Writ.

12 E. 2. c. 5.

Bailiffs of Liberties have full power to return the King's Writs: And every Return of any Writ to be made by any Bailiff of any Franchises or Liberty, shall be delivered to the Sheriff by such Bailiff of Liberty, by Indentures to be made between the Bailiff of the Franchise by his proper name; and the Sheriff by his proper name: And if any Sheriff shall change the Return so delivered him by Indenture, and be thereof convicted (at the suite of the Lord of the Franchise, and at the suite of the party indamaged, &c.) he shall be punished by the King for his false Return, and yield unto the Lord, and to the party double damages. Vide M. 15 E. 3. Abr. daff. 132. *Return of Writs by Indenture.*

12 E. 2. c. 5.

And the Sheriff ought not to make any other Returns, but according to that which the Bailiff of the Liberty shall certify him. Kiel. 89.

Bailiffs of Liberties, that receive the King's Writs, returnable in his Court shall put their own Names to their Returns; so that the Court may know of whom they take such Return, if need be: And if any Bailiff leave out his Name in his Return, he shall be grievously amerced to the King's use. See hic antea, Return of Writs. *Mitter low nofmes.*

2 H. 5. c. 8.

15 H. 6. c. 5.

Amercements for insufficient Returns of Writs, or other Process made by Stewards, or Bailiffs of Liberties, having Return of Writs, and Execution of the same, shall be set upon the heads of such Stewards or Bailiffs, and not upon the Sheriff. 27 H. 8. c. 24. *Amerce.*

8 H. 6. c. 5.

Bailiffs of Liberties shall impanel and return upon Enquests, sufficient persons, and such as be dwelling within their Bailiwicks, &c. in cases of Attainrs and Riots. *Return Enquests*

Where a Precept is made to the Sheriff by the Justices of Peace, to return a Jury to enquire of a forcible Entry, and the Sheriff direct his Precept to the Bailiff of a Liberty to return the Jury for this, for that the force is made within the Liberty. Now the Bailiff of the Liberty ought to make a due Return and Execution of the Precept to him directed (sc. the Bailiff ought to return upon every Jury twenty shillings in Issues at the first day, &c. and that every Jury within his Liberty, who is to enquire of such Forcible Entry, may spend 40 s. per annum) upon pain of twenty pound for every default.

23 H. 6. c. 10.

Bailiffs of Liberties shall return none of the Sheriffs Officers, nor any of their Servants upon Enquests.

Fitz. Chal. 2.

But where the Bailiff of the Liberty is party to the sute, he shall not return the Jury, or pals the pannel of the Array.

1 E. 3. c. 5.

13 E. 1. c. 39.

A man may aver against the false Returns of Bailiffs of Liberties; *Averment.* And shall recover as well against them, as against the Sheriff, of too little Issues returned, as in other cases: And therefore upon a Writ of Distress directed to the Sheriff to distrain the Defendant in the same Writ, or the Jurors of any Enquest, if the Sheriff thereupon shall make his Precept to the Bailiff of the Liberty, the Bailiff ought to return good and sufficient Issues upon the Defendant, or upon the Jurors, if they have sufficient Lands or Tenements within his Bailiwick; otherwise the Plaintiff in the Action shall have an Averment against this Return of the Bailiff, so that the Bailiff might have returned greater Issues, if the Defendant maketh default, or the Jurors: *Crompt. 215.*

Where the Sheriff may and ought for to enter a Liberty, or Franchise, &c. Scribe hic cap. 40. all this Chapter.

Sometimes the Sheriff ex Officio, and without any Writ (of Non omittas propter libertatem) may enter the Franchise and execute his Office, &c. As if, &c.

52 H. 3. c. 21.

3 E. 1. c. 17.

P. Sheriffs 28.

If any mans beasts or other goods be distrained or taken, and withheld or impounded, if they were taken within any Liberty, the Bailiff of the Liberty is to make Replevin and to deliver them; but if the Bailiff of the Liberty (after complaint to him made, &c. or after the Sheriff hath made the Return of the King's Writ unto him) will not, or do not deliver them (or cause them to be forthwith delivered) then the Sheriff himself, for default of such Bailiff shall presently enter into the Liberty, and shall deliver them or cause them to be delivered without delay, upon pain of Forfeiture of double damages: And this is by force of the Statutes made 52 H. 3. c. 21. & 3 E. 1. c. 17. See the Register fol. 81. b. & Fitz. N. B. fol. 68. f. & *viz* N. Br. 44.

*Vic' post enter Franchise.*

*In default del Bailiff.*

Fitz. 68. 1.

If upon a Replevin, sicut Alias, or Pluries, the Sheriff shall return that he hath commanded the Bailiff of the Franchise, &c. who hath made no Return to him, or who will make no deliverance, &c. it seemeth that these are no good Returns, for that by the Statutes of Marlbr. 21. & Westm. 1. 3 E. 3. 17. the Sheriff (upon such default, or Return made to him by the Bailiff) ought presently to enter into the Franchise, and to make deliverance of the goods taken, &c. And so if a Plea of Withernam be in the County by Plaint before the Sheriff, and the Sheriff commands (or sends his Precept to) the Bailiff of the Franchise to make deliverance, &c. and the Bailiff doth nothing, then the Sheriff, or his Officer ex Officio may enter into the Franchise and make deliverance, without any Writ of Non omittas, &c. directed in such case. Et hoc Vicecomiti ex necessitate conceditur.

11 H. 4. f. 6. 94.

Br. Offic' 34.

In a Writ of Redisseisin, and in a Writ to enquire of Waste, the Sheriff is both Judge and Officer, and there, if the Land do lie within a Franchise, the Sheriff cannot return Mandavi Ballivo, &c. for he cannot grant over his judicial power, nor make his Deputy in such case; but the Sheriff ought there to enter the Franchise, and to serve the Writ himself; and if he shall do otherwise, it is Error: For in these cases of Redisseisin and Waste, the Sheriff is Judge of the Record.

*Where he is a Judge.*

*Ne poet fair Deputy.*

Fitz 188. c. Br.

Retor. 26.

Note, that the said Writ of Redisseisin commands the Sheriff, quod in propria persona sua accedat ad terram, &c. & per sacramentum faciat inquisitionem, &c. And so the Writ to enquire of Waste, is, quod accedat ad locum vastatum, 2 H. 4. f. 1.

In

# Cap. 117. Where the Sheriff may enter a Liberty. 463

<sup>2</sup> H. 4. 1. Br. Eje& Custod. 1. In an Ejectione custodie, at the distress with Proclamation, the Sheriff returned Mandavi Ballivo Libertatis, &c. And by the Opinions of Thirning and Markham, the Sheriff ought to be amerced, for the Proclamation is to be made by the Sheriff by the Statute of 23 E. 1. cap. 35. And then for that the distress with Proclamation is a thing entire, the Sheriff ought to have entered the Franchise, and executed the whole Writ himself: But Rickhil and Tirwit held the contrary, Ideo querre. Pet note that in a Precipe quod reddat of Land, part is guildable, and part in a Franchise, the Sheriff shall make his Precept to the Bailiff of the Franchise for parcel, and must serve and execute the rest himself. *Where the thing is intire.*

Ibid.

Fitz. Chal. 2. Fitz. 155. 2. Where the Bailiff of the Liberty is party to the sute himself, he ought not return the Jury, or make the Pannel, but the Sheriff ought to enter the Liberty, and to pannel the array, Herl 7 E. 3. 56. & 7 Ass. 11. *The Bailiff a Party.*

And yet the Bailiff of the Liberty might have made the Return in the name of another Bailiff, For he might have made another Bailiff for that time, by the Opinion of Herle, ibid. & Fitz. Chal. 2.

But the Defendant himself shall never take benefit of a Liberty; And therefore if the Bailiff of a Liberty be Defendant in any Action, and Process of Capias, or Fieri fac. cometh to the Sheriff against the Bailiff of the Liberty, the Sheriff shall execute the Process upon him or his Goods within the Liberty; for that the Liberty is always for the benefit of him that is a Stranger to the Action. 5 Co. 92.

And so it seemeth, where the Lord of the Liberty is party to the sute. Vide Flo. 46 Fitz. 155. 2.

If any Felon or other Offender against the King's Peace, &c. shall be within any Liberty or Franchise, and the Justices of Peace, &c. shall direct their Warrant or Process to the Sheriff for the apprehending of such Offender; the Sheriff is to enter such Franchise, and to execute the Process or Warrant, and not to write to the Bailiff of the Franchise, for that here the King is a party, See 38 Ass. 19. & 41 Ass. 17. Br. Franch. 18. 31. Co. 5. 2. part. fol. 92. *The King a Party.*

Flo. 216. 243. 33 Ass. 19. 41 Ass. 17.

Also note that in all Cases or Actions wheresoever the King is a Party, the Process always must be with a Non omittas propter aliquam libertatem, for none is to serve the King's Process but his Ministers; And there the Sheriff ought not to write or send his Precept to the Bailiff of the Franchise or Liberty, but ought himself to enter, and to execute and serve the Process, otherwise he shall be amerced. And see Fitz. Chall. 129. that the King hath no other Minister than the Sheriff, and where the King is a party, no Franchise shall be allowed, &c. Fitz. Prerog. 21. Enquest 12.

Note that the King gets no Franchise against himself. 22 E. 3. fol. 21.

Note also that every Writ for the King (or where the King is a party) is always a Non Omittas in Law of it self, 41 Ass. 17.

But in other Cases where the King is no party, there, if without a Non omittas the Sheriff shall enter a Franchise which hath Return of Writs, to execute any the King's Process, though the serving of the Process be good, yet he shall be subject to the Action of the Lord, &c. And therefore if the Sheriff, or his Officer, taketh one in Execution for Debt, within a Liberty, although the Execution be good, for that the Sheriff is the immediate Officer of the King and to the King's Courts to execute all Process; Yet the Lord of the Liberty or Franchise, may have his Action of the Case against the Sheriff, for entering into his Liberty. Fitz. N. Br. 95. b. & 20 H. 7. fol. 7. Finch fol. 52.

And

And in all Cases, as well upon the default of the Bailiff of the Franchise, as otherwise, it seemeth that as on the one part the Sheriff may (in some Cases) excuse himself, by returning that he hath commanded the Bailiff of the Franchise, &c. So on the other side, although the Sheriff may more safely enter the Liberty, cum Warrantum habuerit (sc. upon a Non omittas propter libertatem directed to him) yet if without a Non omittas the Sheriff, or his Officers by his command, shall enter the Franchise, and make Execution of the King's Writ, it is good in Law, for that the Sheriff is the immediate Officer to the King, and his Courts in such Cases: And the only danger is, that the Lord of the Franchise may have his Action against the Sheriff, or Officer, for entering his Franchise, &c.

*Enfreint l'our  
Liberty.*

But if the Sheriff, or his Officer, shall take one within a Franchise, upon a Capias, or other original Process, the party so taken shall have no remedy; for it is all one to the party so taken, whether he be taken by the Sheriff, or by the Lord, or Bailiff of the Liberty; and yet here the Lord of the Franchise shall have his Action against the Sheriff, or his Officer, as before. 43 E. 3. 30. & 4. 11 H. 4. 9.

Fitz. 95. b.

If the Bailiff of the Franchise shall take one in Execution within the Guildable, it is Error. 11 H. 4. f. 9. Br. Offic. 35.

A Capias goeth out to the Sheriff of Middlesex, and they arrest the party in London, a Writ of false Imprisonment lieth against them for this Arrest, and yet the Sheriffs of Middlesex are Sheriffs of London.

Br. faux imp.  
26.

*Seise biens de  
felons.*

Bailiffs of Franchise ought not to take or seise the Goods of any person arrested, or imprisoned for Felony, before the same person be convicted or attainted of the Felony according to Law: For that the same Goods be otherwise lawfully forfeited; upon pain to forfeit the double of the Goods so seised to the party grieved, &c.

1 R. 3. c. 3.  
Stamf. 193.

## C A P. CXVIII.

### Bailiffs of Liberties and Gaolers.

*Cause prisoner  
desse approver.*

Sheriffs, Bailiffs of Liberties and Gaolers, which have the keeping of Prisoners in Gaols, if by duress of Imprisonment they shall compel Prisoners to appeal or accuse others, they shall be punished by the Justices of Gaol-delivery: See the Statutes 13 E. 1. c. 12. & 1 E. 3. cap. 7.

1 E. 3. c. 7.

But after by the Statute made 14 E. 3. cap. 10. It was made felony for a Gaoler or Keeper of the Prison to cause a Prisoner to become an Approver or Appealor.

14 E. 3.

*Receiver felons.*

Such Bailiffs of Liberties shall receive Felons arrested, or taken within their Franchise, and safely keep them in Prison without taking any thing. Crompt. 215.

4 E. 3. c. 10.

*Et persons  
suspect.*

Such Bailiffs shall receive Night-walkers, or other suspected persons, which shall be arrested or taken within their Franchise, and shall keep them in Prison till the coming of the Justices of the Gaol-delivery, &c.

5 E. 3. c. 14.

*Certifier l'our  
prisoners.*

Such Bailiffs shall certify the Names of such Prisoners as they have for Felony, at the next Gaol-delivery in that County or Franchise.

3 H. 7. c. 3.

Gaolers.

Gaoler.

4 E. 3. c. 10.  
28 E. 1. Stat.  
de Appel.  
11 E. 4. f. 4.

Sheriffs and Gaolers shall receive and safely keep in their prisons, all Theeves, Felons, and persons appealed or indicted, which shall be taken and attached, and delivered or brought to them by the Constables and Townships; without taking any thing for the receit of them; And the Justices of Gaol delivery have authority to hear their complaints that will complain of the Sheriff and Gaoler in such case, to and punish them if they be found guilty.

Gaolers.

Receiver  
Felon.

But a Gaoler is not bound to deliver his prisoner who is discharged by the Court, untill he be payed his due Fees; For the prisoner is discharged paying his Fees. 8 E. 4. 18.

A Gaoler shall take no Fees for any Servant, Labourer, or Artificer committed to prison, for not serving, &c. neither at their Entry, nor when they go out of Prison, upon pain of ten pound, 34 E. 3. c. 9.

A Prisoner acquitted of Felony, the Gaoler may take 20. d. which is called a Barr Fee: And if he take more it is Extortion.

Sheriffs shall have the keeping, rule, and charge of every of the common Gaols in every of the Counties where they be Sheriff, and the Prisoners therein: And they must be in such keepers, for whom they will answer: Statute 14 E. 3. c. 20. & 19. H. 7. cap. 10. & 23. H. 8. cap. 2. (See my Country Justice pag. 184.) Except all Gaolers whereof any person Spiritual or Temporal, or body Corporate have the keeping of estate of inheritance or succession.

Vic charge  
Gaol.

Co. 4. 34.

And all Punderers, and Felons shall imprisoned in the Common Gaols, and not else where.

23 H. 8. c. 2.

Felon's la  
tantum.

3 H. 7. c. 3.  
P. Prison. 3.

Every Sheriff, Bailiff of Franchise, and every other person having authority of keeping of Gaols, or of Prisoners for Felony, shall certify the names of every such prisoner in their keeping, and of every Prisoner to them committed for any such cause, at the next general Gaol delivery, in every County or Franchise where any such Gaol is or shall be, there to be returned before the Justices of the delivery of the same Gaol, whereby they may as well for the King, as for the party, proceed to make delivery of such Prisoners, according to the Laws, upon pain to forfeit to the King for every default there recorded five pound, 3 H. 7. c. 3.

Certifier.  
leur pri-  
soner.

1 R. 2 Ph. &  
Ma. c. 13.

No Writ of Habeas Corpus shall be granted to remove any Prisoner out of any Gaol, except it be signed with a Justice's hand of the same Court, out of which the same Writ shall be awarded or made.

Habeas  
corpus.

If a Gaoler having a Lay man prisoner (or in his custody) shall suffer him to be instructed or to learn to read, the Gaoler shall be punished for this as a contempt or offence in disturbance of the Common Law, in decreit of the King. Dyer. 205. b. Finch.

Fitz. 93. h.

If a man be committed to the Gaol for debt, or arrearages of account, and the Gaoler maliciously puts upon him so many Irons, or puts him in the stocks, or withholds his victuals from him, by reason whereof he becomes decrepit, lamed or otherwise diseased, &c. he may have his action of the case against the Gaoler: See my Country Justice tit. Imprisonment.

Misuse pri-  
soner.

And yet by the Statute of Westm' 2. cap. 11. Accomptants, and such as are in execution, the Sheriff or Gaoler may put Irons or Fetters upon them, (sc. in reasonable manner,) See hic antea: Execution upon a Capias ad satisfac.

Also notorious Felons, and such as be openly of evil name, or be rebellious, shall have strong and hard imprisonment. Stat. Westm' 1. cap. 12.

D o o

Fut

But if any Sheriff, Gaoler or keeper of any prison, shall procure, or by dures shall compel any of their Prisoners, to become Approvers, or to appeal guiltless people &c. it is Felony. 14 E. 3. cap. 10.

*Escape.*

If the Gaoler shall suffer a Felon to escape the high Sheriff, or Gaoler are chargeable therfore, See hic cap. 126.

If the Gaoler shall suffer a Prisoner to Escape, which prisoner was found in arrears before Auditors, and by them committed to his Gaol, now must the Sheriff, or Gaoler pay to the party the sum of money which was behind upon the Account, Fitz. 95. c. & 130. b. Westm 2. cap. 11.

And if the Prisoner were in upon an Execution, (for debt, or damages) and shall Escape, the Sheriff, or Gaoler shall be chargeable for the debt &c: Fitz. 121 a. b.

He which hath the keeping of the Gaol, by right or wrong, shall be charged for the Escape of prisoners. And if he which hath the Custody of the Gaol in Fee, substituteth another under him, at will, or for life, he which hath the actual possession of the Office shall be charged (by action) for the Escape: but if they be not sufficient, Respondent Superior, &c. Co. 6. 98.

If the Conuzor of a Statute-merchant, be taken in Execution and sent to prison, here if the Gaoler will not receive him, whereby he Escapeth, the Gaoler being able shall answer the Debt, otherwise the Sheriff, &c. which committed the keeping of the prison to him, shall answer the Debt. Stat. mercatoribus

And so in all other cases, where a man is condemned in any of the Kings Courts for Debt, and thereupon sent to prison, if the Gaoler shall refuse to take such a prisoner (being delivered or brought to him) if the prisoner escapeth, the Gaoler, or Sheriff, &c. shall answer the Debt. And if the prisoner do not Escape, yet the Gaoler shall be fined (by the Justices of either Bench, or Justices of Assize, &c.) for such refusal only. 4 E. 3. cap. 10.

If a Gaoler shall refuse to take Felon by the delivery of a Constable, he shall be fined. 4 E. 3. cap. 10.

But if between the Constable and the Gaoler the Felon shall escape, quare if this be not Felony in them both.

An Offender committed to prison by the President of the College, &c. of the Physicians in London, if the Gaoler shall refuse to receive such an Offender, or shall suffer him to Escape, he shall forfeit so much as was assessed upon the said Offender. Stat. 1 Ma. c. 9.

Note, if one in prison for Felony escapeth, if fresh lute be made after him, the Gaoler, &c. may take him again though it be six years after. See Fitz. Escape 2.

So of a Prisoner taken in Execution, who makes an Escape of his own wrong, &c. Co. 3. fol. 44. & 52.

If a Gaoler shall take any obligation of his Prisoner, with condition (endorsed, &c.) to be a true Prisoner, it is void.

*Prisr. oblig.*

So of a condition to pay for his meat and drink, such obligations are void. Co. 10. 100. b. For the Sheriff, Gaoler, or other Officer, are bound to find meat or drink for their Prisoners. Plow. 68. a. Tamen Co. 9. 87. b. that the Gaoler is in manner compellable to find victuals for Prisoners.

Co. 10.  
100. b.

And it seemeth the Gaolers may not take any bond or obligation, of any their Prisoners, or of any other, for the enlargement of Prisoners, in any sort whatsoever.

Con-

Concerning the Gaolers Fees, &c. See hic postea titulo Fees.

Where a man is in prison, &c. although the party at whose suit he is committed do release to him, yet he shall be kept for his fine due to the King; And if the King shall release to him, yet he shall be kept in Prison until he hath satisfied the party: And although both the King shall release his fine, and the party his duty, &c. yet the Gaoler may keep the Prisoner until he hath paid his Fee, and for his reasonable dyet.

Plo. 20. 6.  
Er. faux.  
imp. 32.

Note, that in some case a prisoner sent out of one Shire or County, ought to be received by the Sheriff or Gaoler of another County: And therefore whereas the Stat. of West. 2. c. 11. provideth that in case of accounts before Auditors, and arrearages found Arrestent Corpora eorum & per testimonium Auditorum ejusdem compoti, mittantur & liberentur proximæ Gaolæ dñi Regis in partibus illis, &c. Thereupon it was holden in 27 Hen. 6. that the Auditors ought to commit the accomptant to the next Gaol, although the next Gaol be in another County, for that they might not vary from the place limited by Stat. And then if the Sheriff, or Gaoler shall refuse to take such a prisoner being delivered to them, and so the prisoner shall escape, &c. the Sheriff or Gaoler are chargeable for the debt, by the same Statute of Westminster 2.

*Et en tiel case dicitur que le Seigneur poet aver brief hors del Chancery direct al vic. ou gaoler, &c. commandant luy de resceiver le Accomptant, Et sil ne voet il serra attache, & apres Distr' sil ne vient; Et sil vient & soit atteynt de ceo, il rendra damages al Seigneur pur tout ceo que il ad estre in damage: Ou quant les Auditors amesnent le Accomptant al Gaoler, Et il ne voet resceiver luy, les Auditors poent lesser le Accomptant de aler alarge, Et nient obstant le Seigneur avera brief de Dett. envers le Gaoler, accordant al parole del ceo Statute: Et si le Gaoler n'est suffic. donques le Seigneur poet aver son action de Dett. envers le vic. &c. qui custodiam Gaolæ sibi commisit.*

If a Felon be arrested by the Constable and carried to the Gaol, and the Gaoler will not receive him, whereby the Felon escapeth, the Gaoler shall answer it. See hic cap. 126.

## C A P. CXIX.

### The Fees, Allowances, and Vails due to the Sheriffs and their Officers.

Sheriffs and their ministers ought to take no reward, or other thing, for doing of their Office, but only of the King, or that which is appointed for them to take by the Statutes (and Laws of this Land) and if they do otherwise it is extortion in them: And if any Sheriff, or any of his Officers, &c. shall do any Extortion, and be thereof attained (either at the sute of the King, or of the party) he shall peild twice as much as he took, to the party grieved, and besides he shall be punished for the same at the King's will: or he may be indicted thereof, before the Justices of Gaol delivery, or Justices of peace, and by them punished, &c. they may be fined to the King: See the Statutes 3 E. 1. cap. 26. 20 E. 3. cap. 6. & 1 H. 4. cap. 11. Vide Co. L. 368.

*Extortion.*

Now extortion is thus defined or described.

Extortio est crimen, Quando quis Colore Officii Extorquet quod non est

*Quid.*

est debitum, vel quod supra debitum, vel ante tempus quod est debitum. Co. Co. 10. 102.  
1. L. 368.

Another describes it thus : Extortion is where the Sheriff, Under-Sheriff, Bailiff, or other Officer, by colour of his office, shall take any Excessive reward or Fee ; or shall take more than the Law doth allow him (for the Execution of his office ; ) or shall take any reward, or fee for any matter, cause, or thing, where the Law doth allow no fee at all : P. R. 82.

*Gather plus  
que est due.*

If the Sheriff or any of his officers, (or any other officer, by colour of his office) shall gather, levy, or receive of any person, any amercements, rents, or other duties, which are not due; or more than is due, this is extortion : and so Sir James Altham delivered it in his charge at Cambridge Assises : Ann. Dni 1615.

So if by colour of their office they take from any man any money, or valuable thing that is not due. Co. L. 368. So if they shall take any thing for expedition, it is Extortion.

*Money le  
Roy.*

If any man do levy, and receive money due to the King or for the use, behoof, or service of the King, and do not imploy the same accordingly ; or else doth not pay the same money to the King, or his lawful Receiver, he may be indicted of Extortion : see 27 As. P. 15. & 17. Br. Fees 10 & 11. See hic cap. 126.

If the Sheriff be to keep his Turn, and shall take of the Suters, or Tenants, any money, or other reward to spare them from appearing there, this is Extortion, although his Predecessors have used to take the like. 42 E. 3. 5.

If any Bailiff, or other, the Sheriffs officer, shall take any thing of any person, to spare them from appearing at the Assises, Sessions of the peace, or the like, it is Extortion.

If the Sheriff shall let to farm his County, Hundreds, or any of his Bailiwicks, or any of his Courts, or any part or profit thereof, it seemeth to be Extortion, if he taketh any Fee or Rent for the same.

*Sparing a  
Juror.*

If any Sheriff, Under-Sheriff, Bailiff of Liberty, or any of their officers, shall receive, have, or take by himself or any other, any sum of money, reward, or other profits, directly or indirectly, or do take any promise, make any agreement, or assent to have any sum of money, reward, or other profit, directly or indirectly of any person, for the sparing, not warning, or not returning, of any person to be sworn as a Juror, for the trial of any issue joyned in any of the Courts of the King's Bench, Common Pleas, or Eschequer, or before any Justices of Assise, it is Extortion, and every Sheriff and other Officer so offending, shall forfeit for every such offence v l. to the King and Informer, &c.

27 El. c. 6.

*Omit d'ar-  
rester, &c.*

If the Sheriff or any of his officers, &c. shall take any money, or other reward, for the omitting of any arrest, or attachment to be made, it is Extortion, and the Sheriff or other Officer so Offending, shall forfeit for every such offence xl. l. to the King and Informer, &c.

23 H. 6. c. 13

*Pur monstre  
favor.*

So it is, if the Sheriff or Gaoler, &c. shall take any money or other reward, for shewing ease or favour to any Prisoner or Person arrested : See Br. Fees 6.

Ibid.

21. H. 7. f.

17. a.

So if the Sheriff or Gaoler shall detain any Person in prison (after they be discharged by the Court) for meat, drink or other thing, except for their due fees only, it is Extortion. 8. E. 4. fol. 18. Br. Fees 15.

*Barre fed.*

And yet upon an Action upon the Statute of 23. H. 6. c. 10. for Extortion against an Under-Sheriff, for taking of twenty pence above his fee, of a Prisoner in in his Ward, &c. and upon evidence it

12. H. 7 16.

17.

Plow. 465.

ap

appeared that the Defendant and all Under-Sheriffs of the same County, time out of mind, &c. had used to take of every Prisoner taken for suspicion of Felony, and in their Ward, &c. twenty pence, when they were acquitted; and this fee they called War money, or a War Fee: And by the opinion of the Justices this case was out of the Statute, for the intent of the Statute, is, when Sheriffs &c. shall take such sums of money of their Prisoners, to give ease and Liberty to their Prisoner, (who are in their Ward) but here when the Prisoner was acquitted, he was no Prisoner, &c. and this fee was at the first assigned by the Court for a War Fee, by their discretion, in consideration of the great charge which the Sheriff is at in keeping, carrying, and recarrying his Prisoners, and keeping many servants, to convey and attend them, for danger of escape; And so it seemeth the Sheriff shall have of every Prisoner which is acquitted of Felony, *xx. s.* called a War fee.

Also where a Gaoler shall convey or carry a Prisoner into the King's Bench, about a writ Error, to reverse an Attainder, he shall have for his labour by the discretion of the Court, and it is out of the Statute.

21 H. 7. 17.

*Si vicont ou Gaoler prist del prisoner son toge, ou autre garment, ou argent extra son burse, maugre son teste, ceux sont extra casum Statuti, nec sont extortion, mes un trespasse; pur recovery de que le prisoner poit aver action, & recover le value in damages.*

If a man be committed to the Gaol for 2 several Felonies, and be after discharged, he shall pay but one Fee, for the Gaolers attendance was upon one person: and if the Gaoler shall take any more than one Fee, it seemeth to be Extortion: See 26 Ass. P. 47. B. Fee. 8.

The Sheriff or Gaoler shall take no fee of the Constable or Town, which shall bring or send a Prisoner to the Gaol for Felony. 4 E. 3. Cap. 10.

A Servant committed to the Gaol for departing from his Master, for refusing to serve according the Statute of Laborers made 5 Elizab. The Sheriff or Gaoler is to take no Fee of him upon his delivery. 5 Eliz. Cap. 4.

34 H. 6. f. 42.

If a man that is attainted of trespass do come into the Court, and prayeth to make his fine to the King, and offereth pledges for his fine, if the Gaoler (or other keeper of the prison) do take any Fees of him it is Extortion, for that he came in gratis, and out of Ward, and yielded himself to the Court: but if there be process awarded against him for the said fine, and he taken thereby, then he must pay his fees to the Gaoler, &c. and there it is no Extortion, for that he came in by compulsion, and not willingly, P. R. 9.

24 E. 3. f. 4.  
Br. fees 18.

The Sheriff prescribed to have *xl. s.* per an of l. s. and his Ancestors for holding his Toyn at D. for the ease of the Defendant and his Tenants, for which sum he distrayned, and by the Court it was holden that the Sheriff could not prescribe, for that he is an Officer removable yearly, and therefore the taking of that sum was Extortion.

Sheriffs and their officers shall receive all Writs without taking any fee. 2 E. 3. c. 5.

Sheriffs and Gaolers shall receive Felons without taking any thing, &c. 4 E. 3. c. 10.

And if Sheriffs, their Officers, or Gaolers shall otherwise do, it seemeth to be Extortion.

33 H. 6. c. 9.  
Pl. 465.

No Sheriff, Under-Sheriff, Bailiff of Franchise, nor any other Bail

*Lowre Fees  
for Arrest.*

Bailiff, by occasion, or under colour of his Office, shall take any other thing, by themselves, or by any other person, to their use, or profit of any person by them arrested, or attached, nor of any other for them, for the omitting of any arrest, or attachment, to be made by their Bodies, or of any person by any of them by force or colour of their Office, arrested or attached, for fine, fee, mainprise, letting to bail, or for shewing any ease or favour to any such person so arrested, for their reward or profit, but such as hereunder follow.

The Fees allowed them by Statute are these :

Upon an Arrest, or Attachment	For the Sheriff.	xx. d.
	For the Bailiff who maketh the Arrest or Attachment.	iiij. d.
	For the Gaoler, if the Prisoner be committed to his Ward.	iiij. d.
	For any Obligation for appearance, if the Prisoner be bailed.	iiij. d.
	For any Warrant making.	iiij. d.

And yet the use at this day is, that for any Warrant made upon any Writ, if the Warrant be directed to the ordinary Bailiff, or Bailiff of the Hundred, then for every name the Sheriff, &c. taketh iiij. d. But if the Warrant be made to a special Bailiff, then they use to take for every name i. s. whereas there in no fee due to the Sheriff untill the arrest be made.

Also for the Copy of the Warrant, they use to take iiij. d.

Quere, how these two last be warrantable,

If the Bailiff of a Franchise shall arrest one by a Capias to him directed from the Sheriff, the Bailiff of the Franchise shall have but iiij. d. and the Sheriff xx. d. and the Gaoler iiij. d. 23 H. 6. 10. Crompt. 10.

They are to take nothing for the making of any pannel, sub. poena 40. pound, and to yield treble damages to the party grieved. 23 H. 6. cap. 10.

But for the Copy of a Pannel they are to take iiij. d.

*Rotune de  
pannel.*

And yet for the Return of the Pannel they use to take two shillings, but it seemeth to be Extortion by the opinions of Master Lamb. fol. 415. and of Master Crompton fol 205. b. and the words of the Statute of 23 H. 6. shew as much, the words whereof be thus : The Sheriff, Under-Sheriff, Sheriffs Clerk, Steward, or Bailiff of Franchise, Servant to the Bailiff, or Coroner, shall not take any thing by colour of their Office, by him, nor by any other person to his use, of any person, for the making of any Return, or Pannel. And yet see the Sheriffs Oath 27 Eliz. cap. 12. That seemeth to allow two shillings for the impannelling or returning of a Jury, Ideo quere. Ibidem,

*Other Fees belonging also to Sheriffs, or at least claimed and taken by them, as appeareth in Mr. Powel.*

**F**irst for the Executing of these Writs following, the Sheriff (it seemeth) may take, as he and the parties can agree.

Sc. For

Sc. For the Executing, &c.  
 Of a Writ to Enquire of Damages.  
 Of a Writ to Enquire of Waste.  
 Enquiry upon an Elegit.  
 And so it seemeth in all Cases where the Sheriff is to  
 make any Inquisition.  
 Also to Execute a Statute.  
 Of an Habere facias Seisinam.  
 Of an Habere facias Visum.  
 A Writ of Right  
 A Writ de Particione facienda.  
 For removing the Surcharge of Common, &c.  
 The Writ of Forcible Entry, or holding with Force;  
 where the party is to be Restored,  
 For Execution of a Judgment, Super breve de Dote.

For these  
 the Sher-  
 riff may  
 take, as he  
 and the  
 parties  
 can agree.

The Fees for Re- turns, &c.	Of every Cepi Corpus.	iii.s.d.
	Of a Nihil.	iii.s.d.
	Of a Non est inventus.	iii.s.d.
	Of a Proclamation.	xii.d.
	Of a Venire facias.	xii.d.
	Of an Habeas Corpus.	ij.s.iii.d.
	Of a Distringas.	ij.s.iii.s.d.
	Of a Recordare.	ij.s.
	Of an Accedas ad Curiam.	ij.s.
	Of a Distring. nuper vic.	ij.s.
	Of Mandavi Ballivo Libertatis.	iii.s.d.
	Of an Exigent. sc. for every name returned outlawed	iii.s.d.
	Of Non est inventus, upon an At- tachment out of the Chancery.	ij.s.

And yet the words of the Statute of 23 H. 6. c. 10. are thus, *Et que les Viscount, Soutboic, Clerk del Viscount, Seneschal, ou Bailiff del franchise servant ou bailiff, ne Coroner, preigne per colour de son Office, &c. d' aucun person pur le faiseur de aucun Retorne, ou Pannel, aucun chose; Et pur le Coppy du Pannel forsque iiiij. d.* Yet it seemeth that use and custom hath thence allowed them divers Fees. See the Statute of 34 H. 8. cap. 26. hic postea.

But Co. L. 368. b. saith, That they cannot take any thing, but where, and so far as the Statutes have allowed to hem.

Also for a Replevin by pleynt in the County Court } ij.s.iii.s.d.  
 they use to take.

For the serving of the same Replevin.

For the allowance of a Superedeas iiiij. d. and if it be } xii. d.  
 after the return of the Exigent.

If any Sheriff, or any their Officers, shall take any Fees, &c. contrary to the said Statute of 23 H. 6. cap. 10. they shall lose to the party grieved his treble damages, and besides shall forfeit forty pound to the King, and Informer, or other party hath will sue for the same. *Le forfeiture.*

29 El. c. 4.

No Sheriff, Under-Sheriff, Bailiff of Franchise or Liberty, nor any of their Officers, Ministers, Servant, Bailiffs, or Deputies, by reason or colour of their Office, shall have, receive, or take of any person *Sur Execution.*

person whatsoever, directly or indirectly, for the serving and executing of any Extent or Execution, upon the Body, Lands, Goods or Chattels of any person whatsoever, more, or other considerations or recompence than is hereunder limited and appointed, *sc.* 12 d. of every 20. s. where the Sum exceedeth not 100. l. and 6. d. of and for every 20. s. being over and above the said sum of 100. l. (*sc.* for every 20. s.) that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any such Extent or Execution whatsoever, upon pain that every Sheriff, and other Officer, &c. which at any time shall directly or indirectly do the contrary, shall lose to the party grieved his treble Damages, and shall forfeit besides 40. l. to the King and Informer, &c. 29 Eliz. cap. 4.

*Le forfei-  
ture.*

*Corporati-  
ons.*

*Liberties.*

But this former Statute of 29 El. extends not to any fees to be taken for any execution done within any City or Town corporate.

Note, that Bailiffs, Stewards, and other Minstres within Liberties shall have like fees, and like punishments for extortion, as Sheriffs and their Officers have out of Liberties. 27 H. 8. c. 7.

But if the Sheriff shall arrest any man upon a *Capias ad Satisfaciendum* within a Franchise (as he may,) *quare* in such case whether the Sheriff, or the Bailiff of the Franchise shall have the fee; For the former Statute of 29 Eliz. c. 4. speaketh as well of Bailiffs of Franchises, as of the Sheriff; And it were a wrong to the Lord and Bailiff of the Liberty, if the Sheriff should have the fee in such case.

The Sheriff or his Officer arresteth one, who at the same time hath (in his Purse, &c.) a Superseas out of the Chancery, which he delivereth to the Officer after the arrest, yet the Officer shall have his fee. 21 H. 6. fol. 20. Fitz. Retor. de vic. 16.

*Proclama-  
tion.*

*Their farms.*

For making proclamation at the Church doze upon an Exigent, &c. the Sheriff is to have 12. d. 32 Eliz. 3.

Also it cometh, that there are due or belonging to the Office of a Sheriff (or that Sheriffs have in farm) certain other Fees, Annuities, Rents, Farms, Issues, Fines, Amercements, Escheats, Etreats, and other casual Revenues and Profits. See the Book 20 H. 7. f. 12. Tolls case ver. Cromer, and the usual Indentures made between the Sheriff and his Under-Sheriff.

*Profits in  
Torne le  
vic'.*

By the Statute made 1 E. 4. c. 2. all presentments and indictments taken be the Sheriff in their Torns, shall be delivered to the Justices of Peace to proceed upon, who after shall estreat all fines and Amercements set upon such Offenders (as were indicted or presented in the Torne) and shall deliver such Etreats by indenture (to the present Sheriff, &c.) to the use and profit of him which was Sheriff at the time of taking of such presentments or indictments. And the said (old) Sheriffs shall have to their own proper use the benefit of all such fines and amerancements so estreated. 6 H. 7. f. 2. Br. Lect 21.

Mean the Sheriffs shall have all the amerancements, fines, and other profits of their Torne, for that they have no other thing to levy so great a sum as they (and every of them) is charged withal upon their account, but the profits of this Court, by Fairfax, Fineux, and Termale. 6 H. 7. fol. 2. & 3.

*Quare* the certaintie what the other profits of the Torne are, which the Sheriffs are to have.

And see the Statute of 2 & 3 E. 6. what allowances and rewards Sheriffs shall have upon their accompts in the Exchequer, and P. Sheriffs 38.

But note, concerning Felonies presented in the Torne, the Sheriff

4 Co. 33.

riff is to have no profit thereof, but only the King. 6 H. 7. 3.

M. Elizabeth during the vacancy of a Sherifffwick, granted (by her Letters Patents under the Great Seal) to one, the Office of the Clerk of the County Court, with all the Fees, &c. during his Life; and after a Sheriff was chosen and made of the same County, and upon question made thereof, the Queen's Grant was adjudged to be void, for that the County Court, and the entering of all the Proceedings therein, are incident to the Sheriffs Office, and so of the Sheriffs Towne; and therefore the Sheriff is to appoint Clerks under him, both in his County Court, and Towne, such as he will answer for.

And Law and Reason both require, that the Sheriff, who is a Publick Officer, and Minister of Justice, and who hath an Office of so great Eminency, Confidence, Peril, and Charge, ought to have all Rights appertaining to his Office, and also ought to be favoured in Law before any private Person, &c. Co. 4. 33.

The Sheriff is also to have all Amerciaments assessed or set upon Offenders in the County Court. Whereof see hic cap. 115.

The Sheriff is also to have for the Entering of Pleints, Process, Pleas, and Judgments in the County Court, the Fees due and accustomed.

By the Statute made Ann. 34 H. 8. the Sheriffs in Wales shall keep their County Courts Monthly, and their Hundred Courts for Pleas under 40 s. as is used in England; and shall take for the entering of Pleints, Process, Pleas, and Judgments in their said Shire Courts, and Hundreds, such small Fees as are used to be taken in Shires and Hundreds in England. P. Wales 41. Wales.

P. 45. 34. H. 8.

All Bills sued before the Justices of Assize in Wales, in Personal Actions, whereof the Debt, Duty, or Damage, is under 40 s. the Sheriff shall have for the Return of every Bill 2 d. and for every Venire facias, Tales, Habeas corpora, and Distringas 2 d. and for Writs of Execution upon the Judgment in any such Bill 12 d. And in Bills sued before the said Justices, in Actions personal, above the Sum of 40 s. the Sheriff shall have for the Return of every such Bill, 4 d. and for the Return of every Venire facias, Habeas corpora, Distringas, and Tales 4 d. and for every Writ of Execution 2 s. And in all Personal Actions sued by Original Writs returnable before the said Justices, the Sheriff shall have for every Iterum summi, distring' and Alias Distring' 4 d. And for every Venire fac', Habeas corpora, Distring' and Tales 6 d. And for every Writ of Execution to be executed upon the Judgment in any such Actions 2 s. For the serving of every Writ of Elegit, 6 s. 8 d. And in all real Actions, or mixt, pursued before the said Justices by Original Writ, for Return of every Original Writ, 2 s. And for Return of every other Writ, and Judicial Process depending upon the same, before Judgment, 2 s. And for every Writ of Execution after Judgment, upon every Original, in Actions real or mixt, 2 s. And for serving of every Writ of Habere facias seisinam, 6 s. 8 d. And for Attachments upon Capias, or other Process sued before the said Justices, by Original or Judicial Writ, if he return Cepi corpus, 2 s. And for a Redditi se, upon an Exigent of Felony in Appeal of Murder, or Maim, or upon any Indictment of Felony, or Murder, 2 s. And upon a Redditi se, upon an Exigent of Debt, Trespass, Detinue, and all other Actions Personal, 12 d. And for the making of a Repleg' 12 d. and Withernam upon the same 12 d. For the Return of every Writ of Appeal of Murder, Felony, or Maim, 12 d. And upon all other Process grown upon the same as Venire facias, Tales, Hab. corpora, and Distring' 12 d. And in every Action taken be-

P p p

for

foze the Sheriffs by Justices foze the Summons thereof 4 d. and foze every other Proceſs thereupon 4 d. And foze every Priſoner delivered by Acquital, oꝛ by Proclamation foze any manner of Felony 12 d. 34 H. 8.

And the ſaid Sheriffs ſhall have foze the return of a Writ of falſe Judgment out of a baſe Court, befoze the ſaid Juſtices 2 s. And the ſaid Sheriff ſhall take no manner of Fee foze the return of any of the ſaid Writs of Execution befoze expreſſed, unleſs he return the ſame excuſed. 34 H. 8. 34 H. 8. P. Wales 48.

Wales.

Every Sheriff within the twelve Shires of Wales, hath foze his Fee yearly Five Pound. 34 H. 8. cap. 26.

Cambridge.

Where the Sheriff of Cambridgeshire is to have to his own uſe foze his time, Ten Pound per Annum, out of the Manor of Maddingley, in the ſaid County. See Stat. 34 H. 8. cap. 24. hic tit. Knights of the Parliament.

Alſo the Sheriff is to have divers Profits of the County, under the name of Wiſcountiells. Whereof ſee hic antea cap. 3. & 9.

Every Sheriff (within one Month after the arrival) may ſeiſe all the Goods of Egyptians, &c. that ſhall come into this Realm, and may keep the one Moiety thereof to his own uſe, making Accompt to the King in the Exchequer foze the other Moiety. 22 H. 8. c. 10.

But at this Day, Sheriffs are abridged of many of their ancient Duties; foze of ancient time, foze Theſt only the Sheriff had to his own uſe, all the Felons Goods. hic fol. 29. b.

## C A P. CXX.

### Their Accompt.

**B**y the Stat. de Scaccario, made 51 H. 3. Sheriffs ſhall come to the Proffer (and make their Accompts and Payments) in the Exchequer twice in the Year, ſc. the Moztow after St. Michael, and the Moztow after the Uras (oꝛ Octaves) of Eaſter.

Quere, If this coming to the Proffer, and making of Accompt in the Exchequer, muſt not be, oꝛ was not heretofore by the High-Sheriff himſelf perſonally: The Sheriff may make his Accompt (oꝛ proffers) by an Attorney; to which purpoſe there is a Writ in the Register, fol. 139. de Attornat. Vicecomitis pro profero faciendo, admittendo. By which Writ alſo it appeareth, that theſe Proffers (oꝛ this their Accompt) ſhould be, ad Cratiſimum Sancti Michaelis, & ad octabas Paſchæ, &c.

Alſo if there be cauſe the Sheriff may have a Writ (to the Treasuſer and Barons) foze the reſpitting of his Accompt, until ſome other day oꝛ time. Regiſtr. 139.

And by the Stat. of 5 R. 2. cap. 11. The Accompts in the Exchequer ſhall be moze ſpeedily heard, made, and ingroſſed, than they were wont befoze times; ſaving that the Parcels of the ſame Accompts be made as fully as they were wont to be in times paſt.

No Sheriff ſhall be charged with any Iſſues to be levied, noꝛ ſhall levy any befoze they paſs out of the Exchequer, by the Cuſtreats of the Juſtices there to be levied; (And by thoſe Cuſtreats, every Head ſhall be charged foze Iſſues forfeited like as foze Amercements.) And if any Sheriff will anſwer foze the Iſſues of any Recogniſor, Pledge, oꝛ Painpernour, by him undertaken and reſtoꝛned (into the Court) which at the time of the Return is not able to pay ſuch Iſſues oꝛ Amercements, the Sheriff ſhall be charged, and ſhall anſwer theretoze in the Exchequer. And the Sheriff ſhall

shall make Tallies (or Acquittances) to every one, of every Sum of Money which they shall receive, &c. 27 Ed. 1. cap. 2.

And yet all Fines, Amercements, Issues, Forfeitures, and Penalties whatsoever, arising before the Justices of Peace at their Sessions, are to be extracted by the Clerk of the Peace (out of the Records of the Justices) and to be indented by him, and then to be delivered, one part to the Sheriff to levy the Sum thereby, and the other part to be certified to the Barons of the Exchequer; and the Sheriff is accountable for the same in the Exchequer, upon those Returns so certified, into the Exchequer. Stat. 14 R. 2. c. 11.

Also upon Process, or Returns, directed to him out of any other his Majesty's Courts, the Sheriff is to levy the King's Moneys, Fines, and Amercements, &c. Wilk. 35.

*The time.*

But now it seemeth that as well High-Sheriffs, as Under-Sheriffs, (of most Shires) in Hillary-Term next after they are out of Office, are sworn to yield up and give a just and true Account to the King, and his Officers of the Exchequer, of all such Duties, Perquisites, and Profits whatsoever (happening within the time or compass of their Office) which are due and belonging to the King, and chargeable upon them to answer for by reason of their Office. See the Statutes 51 H. 3. de Scaccario Statut. de Rutland 10 E. 1. R. 2. cap. 5. & 5. R. 2. cap. 11. for what things they are accountable.

It seemeth that Sheriffs may make their Accounts by Attorney, or may respit it by the King's Writ. See Registr. fol. 139. a. a Writ de Attornato vicecom' pro Profero faciendo admittendo.

### *The Form of the Oath of a Sheriff for the passing of his Account.*

**Y**OU shall swear that you shall yield unto the King's Majesty that now is, a true and lawful Account of the Issues and Profits of your said Office of Sherivalty, in his Majesty's Counties of *Cambridge* and *Huntingdon*, due unto his Majesty from the Feast of *St. Michael* the Arch-angel, in the Twentieth Year of his Majesty's Reign, until the same Feast now last past (which is for one whole Year;) and in the same Account you shall make true Answer of all Felons Goods, Outlawed Mens Goods, Attainted Mens Goods, Weyffs, Estrays, and all other Profits whatsoever which hath come to your Hands, your Under-Sheriffs Hands, or any of your Bailiffs, Officers, or Ministers hands, by reason of your said Office. And in the same Account you shall charge your self with all such Sums of Money, as you, your Under-Sheriff, or any of your Bailiffs or Officers for you have levied, or lawfully might have levied to his Majesty's use. And in the same Account you shall make no Petition, ask no Allowance nor Discharge, but such as shall be good and true. And that you do deliver a true Declaration of the Viscountiells, declaring of whom and where you do receive, and wherefore, till such Sums of Money contained in the same. And well and truly behave your self in yielding the same Account, as a true Accountant ought to do, without Omission or Concealment. So help you God.

By the Stat. 1 E. 3. stat. 2. cap. 4. The Account of Sheriffs, and other such Ministers shall be accepted after the Points of their Oath.

And by the Opinion of Blage (one of the Barons of the Exchequer) Ann. 6 H. 8. the Sheriff is not accountable for the Goods of

Felons, Fugitives, and the like, save in a gross Sum for the Farm of the Profits of the County. Kiel. fol. 173.

Neither is the Sheriff accountable for other the Profits of the County, save in a Sum in gross. Ut supra ibid.

Now what the Profits of the County be; see hic cap. 3.

If any Fines or Amercements (called *Multas*;) be set or assessed in any of the King's Courts upon any Man, or any Arrearages of Accompts (called *Reliqua*) of such things as is of Customs, Taxes, Subsidies, Tents, Quinziesms, and the like, the Sheriff of the Shire doth gather them up, and is accountable in the Exchequer for the same: But for the ordinary Rents of the King's Lands, and most commonly for the Taxes, Subsidies, Customs, Tents, and Quinziesms, there be particular Receivers and Collectors, which do gather up, and answer the same into the Exchequer. Smith de Repub. 59.

By the Statute 2 & 3 E. 6. c. 4. every Sheriff by himself, his Attorney, or Deputy, shall be sworn at this Day of prefixion (when he shall answer before the Lord Treasurer, and Barons, &c.) to bring and deliver into the Exchequer, Rolls of Parchment of all such particular Sums of Money which he hath, or might have levied, making mention of what Person, of what Lands, and for what cause every of the said Sums be levied.

This Day of prefixion seemeth to be the Day in, or at which the Sheriff, by his Bond entered in the Exchequer, standeth bound to appear there to account for the Charge of his Office.

The Under-Sheriff, or his Deputy, is to attend unto, and to answer all the Opposals in the Courts of Exchequer, King's Bench, Court of Wards, and other his Majesty's Courts, when and where the Sheriff shall be opposed, called, or examined; so that the High Sheriff, his Heirs, Executors, &c. and his and their Lands and Goods may be discharged of and from all Fines and Amercements.

What other things they shall be accountable for, appeareth in part here before, tit. Franchises, Rents, Farms, Debts, Issues, Amercements, Fines, and Forfeitures: But yet for your better satisfaction, the Experience and Course of the Exchequer is to be learned.

The Course of the Exchequer is said to be thus, sc. That so soon as a Sheriff hath entered into his Account (for Issues, Amercements, or Mean Profits for Intrusions and Alienations without License) to mark upon his Head, *O Ni* which is as much as, *Oneratur Nili habeat sufficientem exonerationem*, &c. and presently he is thereby become the King's Debtor, and a Debt set upon his Head: And so soon as the Sheriff is become the King's Debtor of Record, ut supra, presently are the other Parties become Debtors to the Sheriff, and the Sheriff in that case shall cause the Debt to be levied against those particular Persons by a Constat. Kiel. 187.

But where the King by Parliament shall pardon all Issues, Amercements, and Intrusions, &c. if the Sheriff after such Pardon shall enter into his Account, without taking advantage of the Pardon, here he is chargeable to the King by his own folly, and the particular Persons are at liberty, and shall have advantage of the Pardon, &c. Ibidem.

It seemeth, that Sheriffs shall not be accountable but for their own times, and for the Year of their Sherifwick only; neither shall they be charged, in or upon their Account, with any Arrearages or Duties due to the King by any of their Predecessors, in the said Office of Sherifwick. See the Stat. 2 & 3 E. 6. c. 34. But quere if this Statute extend not only to the Sheriffs of Northumberland.

Sheriffs

Sheriffs how they shall be charged upon their Accompt in the Exchequer, with the ancient Farms and Rents of the Counties. *See hic cap. 9.*

Sheriffs shall not be charged with any other Issues than those for which they shall have Warrant under the Seal of the Exchequer. *Hic cap. 11.*

In all Cases of Lands where the Office is found before the Escheator, there the Escheator is chargeable: But where the Office is found before Commissioners, there the Sheriff shall be charged upon his Accompt; yet but according to the yearly value which is found by the Office, and no further. *Kiel. 172. 173.*

The manner of their Accompt. *See Dr. Wilkenfon's Book of the Office of a Sheriff, fol. 36. 37. The manner.*

What Allowances they shall have upon their Accompt. *See more Their allowance.*

the Statutes of Rutland, made 10 E. 1. & 4 H. 5. c. 2.

And besides, learn the Use and Course at this Day.

All Sheriffs shall have such Tallies of Reward, and other Allowances, as they have heretofore had: And they shall be discharged upon their Accompts in the Exchequer of such Sums of Money which they cannot levy. 3 E. 6. 4.

What these Tallies be, *see Dr. Cowel, verbo Tallies.*

By the Statute 5 R. 2. c. 13. if an Accomprant, being Shilled, will swear that he oweth nothing to the King, he shall be thereupon discharged.

By the Statute 7 H. 4. c. 11. Sheriffs shall have allowance by their Dath, of the Issues of their County.

Also by the Statute 4 H. 5. c. 2. Sheriffs shall have allowance upon their Accompts by their Daths, of things casual, &c. But not of such things as run in yearly Farms, or yearly Demands.

Sheriffs also shall have allowance for the Wages of the Justices of Peace at their Quarter Sessions; but the Sheriffs allowance herein is but iv. s. a Day apiece for eight Justices: And herein the Sheriff is often wronged by the Clerk of the Peace of the same County, who receiveth all the Fines, and payeth the Wages, and if there be any surplussage, puts it in his own Purse, &c. *Wilk. 39. Vide hic cap. 90. & 99.*

And they shall have allowance for their Charges and Expences which they sustain by the Justices of Assize Diet, and by other means, 3 E. 6. c. 4. 34 H. 8. 16.

For the ordinary Charges of the Sheriffs Accompt, see a particular thereof in Dr. Wilkenfon's said Book, fo. 38, 39, 40, & 41. *Their charge.*

But besides those ordinary Charges, the extraordinary Fees and Charges of passing the Sheriffs Accompts seem to be such, and the Business it self so tedious, as it troubleth them all (be they never so skilful therein:) Which thing requireth a redress, considering that the Under-Sheriffs, or Officers upon whom this Burthen lieth, are thereby not only stripped themselves of almost whatsoever they shall justly or honestly save in their Offices, but are also enforced thereby to extort and wring from the Subjects to make themselves savers.

None of the Sheriffs of the Counties of Surry and Suffex, Essex, and Hertford, Somerset and Dorset, Warwick and Leicester, Nottingham and Derby, Oxon and Berks: (being sometimes joyned) shall pay in any Court of Record, for any Duty belonging properly to the Office of a Sheriff, any other Fees or Charges, than only the one half of the Charges and Fees which he should have payed if he had been Sheriff of two of the said Shires, as formerly was used;

sed; and their Charges and Rewards, &c. shall be divided. 8 Eliz. cap. 16. & 13. Eliz. cap. 22.

Sheriffs having their Quietus est, they, their Heirs, Executors, and Administrators, Lands, Tenements, Goods, and Chattels, shall be absolutely discharged of their Accompts, (sc. of all manner of Sum or Sums of Money which they shall have levied, or received, and shall be pretended not to be accounted for, &c. unless such Sheriffs shall be called in question for the same within four Years after the time of their Account and Quietus est. Statute 21 Jac. Regis cap. 5.

And every Officer that shall send out any Process, or by whose default any Process shall be sent out contrary to the former Statute, shall for every such Offence forfeit to the Party grieved forty Pounds, and besides pay Costs and Damages; the same to be recovered in the King's Bench, or Court of Common Pleas.

Now this Quietus est must be a full Discharge out of the King's Majesty's Court of Exchequer, as well of his Green Wax and Pipe-alber, as also for, and upon Recusants Lands, Seisures, and for all other Debts, Duties, and Demands, which are, shall, or may be charged in the said Sheriffs Accompts, or which may be imposed, for or by reason of the said Sheriffs Office. And the High-Sheriff shall do well to bind his Under-Sheriff, to procure, and deliver to him such a Quietus est, within one Year after his Office is expired.

*Totting.  
Nickling.*

Amongst other things, it seemeth behoveful for Sheriffs or Under-Sheriffs, upon the making of their Accompts, to have a special care what they Tot, and whom they Nichil; that is, that they charge or discharge Men orderly, honestly, and with understanding; for if they Tot or charge any thing, though it can never be levied, yet it will now hardly be avoided, but it must be paid; and if it be Nichiled, if it be Issues of Jurozs, though they be never so bad, and cannot be levied, yet between the old Sheriff which returned them, and the new Sheriff which Nichiled them, they must be payed, (by the Statute made 27 E. 1. c. 2.) although it be seven Years after, if there come no Pardon in the mean time. And yet where the old Sheriff returneth a Juroz in Issues, the next Sheriff cannot, nor may not return the same Juroz Nihil, contrary to the former return of his Predecessor, by the Book 19 H. 6. Br. Retorne 49. See hic antea fol. 75. 27 E. 1.

*Liver del nosmes  
le freeholders.*

But to prevent this, it behoves all Sheriffs before they take upon W. 36. them to return any Jurozs, to get them a true and perfect Book of all the sufficient Freeholders Names in the Shire, and especially of all those which dwell in the Guildable (howsoever they do of those which are in Liberties, but of both is best, that the one may help the other) and to return few or none that be mean Freeholders in the Guildable, lest (by the former recited Statute) they be enforced to pay their Issues for them; and this they may bring to pass, either by the help of the Justices of Peace in their several Divisions, who may cause the Constables of every particular Town, to bring a true Certificate (of the sufficiency of every Freeholder within their several Towns) unto the first Sessions (that shall be holden in that County, &c.) after the Election of the new Sheriff, to be to him delivered there; or else the new Sheriff himself may cause his Bailiffs to do this within every of their Hundreds or Divisions; and besides, the help of the Subsidy-Books will not be a little available hereunto.

This word totting or totted, is a word used of a Debt which the foreign Opposer, or other Officer in the Exchequer noteth for a good Debt

Debt to the King, by writing this word (Tot) unto it. Minsh.

Also this word Nichilling, or Nichil, is a word set upon a Debt by the foreign Opposer in the Exchequer, when that it is illeivable, or cannot be levied. Ibid.

So that it seemeth, by Totting is understood Charging; and by Nichilling is understood Discharging of the Party indebted, &c.

By the Stat. 5 R. 2. cap. 13. The Accompts of Nichil in the Exchequer shall be wholly put out; or if any such shall remain, the Accomptants immediately after their Oath taken in the Exchequer, that they owe nothing to the King, they shall be discharged, &c.

And there is an Officer in the Exchequer, called the Clerk of the Nichils, who maketh a Roll of such Sums as are Nichilled by the Sheriffs upon their Extreats of Green Wax, and delivereth the same in to the Lord Treasurer's Remembrancer's Office, to have Execution done upon that for the King. Minsh.

Foreign Opposer, Forinfecarum Oppositor, is an Officer in the Exchequer, to whom all Sheriffs and Bailiffs do repair, by him to be opposed of their Green Wax, and from thence draweth down a Charge upon the Sheriffs or Bailiffs, to the Clerk of the Pipe. Minsh. & *Termes del Ley*.

Now with this Foreign Opposer, the Sheriff must either Tot, Nichil, or set over into Liberties all the Debts and Sums of Money contained in the Summons of the Green Wax, and in the Extracts of the Peace of the County where he was Sheriff: Wherein let him be careful first fully to learn which are good Debts, and which are not, and which are within Liberties, and which are not, before he come to his Accompt or Opposals, and then to make his Book of all the Charge contained in his Summons and Schedules, accordingly. W. 37.

Green Wax, this word seemeth to be used for the Extreats of the Fines and Amercements, &c. delivered to Sheriffs out of the Exchequer, under the Seal of that Court, to be levied in the County. Ibid. See the Statutes made 42 E. 3. c. 9. & 7 H. 4. c. 3.

Clerk of the Pipe is an Officer in the King's Exchequer, who having all Accompts and Debts due unto the King delivered, and drawn down out of the Remembrancers Officers, chargeth them down into the great Roll; who also writeth Summons to the Sheriff to levy the same Debts upon the Goods and Chattels of the said Debtors; and if they have no Goods, then doth he draw them down to the Lord Treasurer's Remembrancer to write Extreats against their Lands. The ancient Revenues of the Crown remain in charge before him, and he seeth the same answered by the Farmers and Sheriffs to the King. He maketh a Charge to all Sheriffs of their Summons of the Pipe, and Green Wax, and seeth it answered upon their Accompts. He also hath the ingrossing of all Leases of the King's Lands. Ibidem.

The Pipe-Office seemeth to be so called, because their Records there which be Registered in their smallest Rolls, are altogether like to Organ-pipes. Minsh.

But they have another Roll there, called the great Roll (or Pipe) which is of another form. Ibid.

A Clerk of the Remembrance of the Exchequer shall be assigned to sit with the Clerk of the Pipe, to see Discharges made in the Pipe, and to enroll them in the Remembrance, to cease all Processes thereupon made: And the Summons of the Pipe shall be withdrawn, according as the Parties by Processes be discharged. 17 E. 3. c. 4.

The Clerk of the Pipe, and the Remembrancers of the Exchequer

quer shall be sworn, that from Term to Term (whilst the Exchequer shall be open) they shall see all Writs (of the Great Seal, or Privy Seal) which shall be sent to the Exchequer the same Term, for the final Discharge of any Person, of any Demand in the Exchequer, be entered, &c. 5 R. 2. cap. 14.

Also the Remembrancers shall be sworn to make every Term a Schedule of the Names of every one that is discharged in their Offices, by Judgment or otherwise, of any Demands containing their Discharge, and shall deliver it to the Clerk of the Pipe the same Term, to the intent that the Clerk of the Pipe shall thereof discharge the said Parties in the great Roll. Ibid.

Also the said Clerk of the Pipe shall be sworn, that he from Term to Term shall require the same Schedules, and the same by him so received, he shall discharge the said Parties in manner aforesaid: And in the same manner the said Clerk of the Pipe shall certify in writing to the said Remembrancers, the Discharge made in his Office, to the intent that a Man discharged in one place shall be discharged in all other places of the said Exchequer. 5 R. 2. c. 14.

*Officers, &c. in the Exchequer, vide Tous ceux in Minsh.*

**T**here be two Officers in the Exchequer, called Parcel-makers: these make the Parcels of the Elcheatozs Accompts, &c. v. Minsh.

Pipe (Pipa) seemeth to be a Roll in the Exchequer, otherwise called the great Roll. Minsh.

Clerk of the Pipe, quid see Minsh.

Clerk of the Estreats. Ibid.

Clerk of the Pell. Ibid.

Clerk of the Pleas. Ibid.

Clerk of the Richils, quid Ibid.

Foreign Opposer, quis Minsh.

Remembrancer { Of the King.  
Of the Treasurer.  
Of the First Fruits.

Tellers, sont 4. in Lescbequer, leur Office vi. Minsh.

Treasurer, sc. Lord Treasurer, vi. Ibid.

Writer of the Tallies, is a Clerk to the Auditor of the Receipt, and writeth upon the Tallies the whole Letters of the Tellers Bills.

Remembrancers of the Exchequer (Rememoratores) be three Officers or Clerks; one called the King's Remembrancer, Stat. 35. El. c. 5. And another called the Lord Treasurer's Remembrancer, upon whose Charge it seemeth to lie, that they put all the Justices of that Court (as the Lord Treasurer, and the Barons) in remembrance of such things as are to be called on, and dealt in the Prince's behoof. The third is called the Remembrancer of the First Fruits, concerning whom. See the Statute 37 E. 3. c. 4. & 5 R. 2. Stat. 1. c. 14 & 15.

The King's Remembrancer entreth in his Office all Recognisances taken before the Barons, for any of the King's Debts, for Appearances, or for observing of Orders. He also taketh all Bonds for any of the King's Debts, for Appearances, and for observing of Orders, and maketh out Process upon them for the breach of them. He writeth Process against the Collectors of Customs, Subsidies, and Fifteens, for their Accompts. All Informations upon Penal Statutes are entered in his Office; and all Matters upon English Bills in the Exchequer Chamber are remaining in his Office. He maketh the Bills of Compositions upon Penal Statutes; taketh the Stalements of Debts; maketh a Record of the Certificate delivered to him by the Clerks of the Star Chamber of the Fines there set,

set, and sencerth them to the Pipe. He yearly (in Crasino Animarum) readeth in open Court the Statute for the elections of Sheriffs, and giveth those that chuse them their Oaths. Ibidem.

The Treasurers Remembrancer maketh Process against all Sheriffs, Escheatozs, Receivers, and Bayliffs for their accompts. He maketh Process of Fieri facias, and extent, for any debts due to the King, either in the Pipe, or with the Auditors. He maketh Process for all such Revenue as is due to the King by reason of his Tenures: He maketh a Record, whereby it appeareth whether Sheriffs and other accomptants pay their profits due at Easter and Mich. He maketh another Record, whereby it appeareth whether Sheriffs and other accomptants keep their days of prefixion (or days, or times appointed: ) All estreats of fines, issues, and amerciaments set in any Courts at Westminster, or at the Assises or Sessions are certified into his Office, and are by him delivered to the Clerk of Estreats to write Process upon them: he hath also brought into his Office all the accompts of Customers, Controllers and other accomptants, to make thereof an Entry of Record. Ibid.

The Remembrancer of the first fruits taketh all Compositions for first fruits and tenths, and maketh Process against such as pay not the same. Ibid.

The Clerk of the Estreats is also a Clerk belonging to the Exchequer who termly receiveth the Estreats out of the Lord Treasurer's Remembrancer his Office, and writeth them out to be levied for the King; he also maketh Schedules for such sums estreated as are to be discharged. Ibid.

The word Profers, is the time appointed for the Accompts of Sheriffs and other Officers in the Exchequer, which is twice in the year, (Mish.) see Stat. de Scaccario. 51 H. 3. hic antea. Or else the word Profers may seem to signifie the Accompt it self, or the profit or things for which they are to Accompt.

Note that if the Sheriff shall seise the goods of one that is outlawed, or for other like cause, and when he maketh his accompt, he doth not accompt for the same, &c. it seemeth the owner of the goods may have an action of Trespas against the Sheriff for such seising or taking of his goods, (and shall recover the goods, or the value thereof in damages) for that the Sheriff must plead that he hath accompted for them; and if he shall not accompt for the same, he shall be said to be a trespassor ab initio, see 3 H. 3. b. & 21 H. 7. 23. also see 18 E. 4. 23. 7 H. 4. 5. & 14 H. 6. 5.

If the Sheriff (or his Officers) shall gather or levy the King's Rents, Debts, or other duties, and shall not accompt for the same in the Exchequer upon his accompt, the Sheriff is liable both to the King, and to the action of the party, &c. besides the danger of his Oath.

And therefore in an action of Trespas a Sheriff for taking the Plr. Cattel, &c. the Sheriff justified that he distrained for Rent due to the King, and that he had accompted for the same Rent in the Exchequer. Liber Intrac. tit. Trespas. But otherwise it is, if the time be not come, wherein the Sheriff is to accompt.

Note, that the high Sheriff is accomptable (for all things belonging to his Office) to the King; And the Under-Sheriff shall yeld an accompt to his high Sheriff. 11 H. 2. Fitz. Accomt. 48.

14 Car. 2. c. 21.

*Sheriffs eased in passing their Accompts in the Exchequer.*

*Vide the Appendix.*

For the better help of Sheriffs, I have here again shortly set down their dangers, &c. that so by their care and diligence they may the better prevent and eschew the same.

The Dangers, Forfeitures, and Punishments of Sheriffs, for things done, not done or misdome by them, or by their Officers. Cap. 123.

**A**lbeit that the care of our Parliaments hath always been, that choice should be made of such Persons for this Office of the Sheriff, as should be men of good sufficiency, such as might attend to execute this Office (for the good of the King and his people) and such as needed no Reward for their travel and pains in that behalf (as may appear by the several Statutes here before recited,) yet partly in regard of their great charges by them undergone, as well in their attendance and execution of their places, &c. as also of the great sums of money wherewith they are charged upon their accompts; and partly in regard that it is not possible that the Sheriffs themselves should do execution of all things belonging to their Offices, but that they must use the help of divers and sundry other inferior officers and persons therein; therefore the Laws and Statutes of this Realm have not only rewarded the high Sheriffs themselves, but also their inferior officers with some small allowances, avails, and fees, as may appear here before. And on the other side, for that the negligence, remissness, and misdoing of men, put, and placed so highly in trust, if it should not sometimes be corrected by due chastisement or punishment, it would breed not only too much dulness or carelessness in these chief officers themselves, but also much extortion, oppression, and other wrongs, both to the King and his people, from them, but especially from their inferior officers and ministers. Therefore the Laws and Statutes of this Land have likewise inflicted due punishments and pains, not only upon the high Sheriffs themselves, but also upon their inferior officers; and in many cases upon the high Sheriff himself, for the faults and defects of his under officers; as may partly appear here before throughout this book, and more particularly in this that followeth.

And therefore in some cases the Sheriff, &c. shall be amerced, and in some cases shall pay a fine, or forfeit to the King. In other cases he shall be imprisoned; and in some cases may be indicted as an offender against the King in the highest degree; and in other cases shall be liable to the action of the party grieved, and chargeable to pay his debt or damages.

*Escape.*

And first note, that the Sheriff of every County shall have the keeping of, and shall be chargeable, and charged with the common Gaol, and Prison of the same County (where he is Sheriff) and with all the prisoners therein; and must put in such Gaolers for whom they will answer, by the Statutes of 14 E. 3 c. 10. & 19 H. 7. c. 10. Co. 4. 34. And therefore the high Sheriff himself shall be answerable for the escape of a Felon, suffered by his Gaoler, and (by some opinions) may be indicted of Felony for the same, if the escape suffered by his Gaoler were voluntary. See the Presidents to this purpose in Lamb. v. v. 5. and in West. M. 1.

6 H. 7. 11.  
& 10 H. 7. 26.  
9 Co. 98.

*De Felon.*

And yet Sir John Savadge being a Sheriff in fee, was (in 5 M.) indicted in the King's Bench for the escape of two Felons suffered by himself, felonice & voluntarie, &c. and his office was only seised therefore, &c. as it seemeth in Dyer fol. 151. & Keil. 192.

But yet note that Sir. John Savadge was not there put to answer, upon the Indictment by way of Arraignment, but upon a Scire

Scire Facias, &c. otherwise if he had been arraigned and found guilty, Judgment of death might have been given against him for that Escape. See Keil. 195, 196.

And though he which hath the Custody of the Gaol, shall be charged with the Escapes of Prisoners, yet if he be not sufficient, then respondeat Superior, sc. the Sheriff from whom the Gaoler had the custody of the Gaol committed to him. Vide 9 Co. 98.

But the Dr. and Student cap. 42. maketh this difference, sc. where the Escape was by negligence, there the Gaoler or Sheriff may be charged therewith; but if it were a wilful Escape in the Gaoler and so Felony, the Sheriff shall not answer to the Felony; but then it seemeth he may be fined to the value of his Goods, for that the Escape was voluntary. See Stamf. 35 H.

And indeed such an Escape, though wilfully suffered by the Gaoler, or other the Sheriffs Officer, without the Sheriffs knowledge or consent may seem but a negligent Escape in the Sheriff, and so but finable in the Sheriff, (or a cause to seize his Office being in Fee) and to be Felony only in the Gaoler or Officer, who voluntarily suffered the Escape. See Crompt. 252. b. Dr. & St. 137. & quære inde.

If the Sheriff shall bail and deliver a Prisoner, who is in Prison, or under arrest of Felony or suspicion of Felony, this is a voluntary Escape, and so seemeth to be Felony in the Sheriff; Except where he doth it by virtue of the King's Writ to him directed for that purpose.

If the Sheriff shall keep a Prisoner (which is committed for Felony) in his own house, quære, if this be not an Escape, for that the Gaol is the King's Prison, and there such as be Prisoners for matters concerning the King, ought to be kept. See Crompt. 184.

Where a Felon is taken Prisoner by the Sheriffs Bailiffs in a Town, and in going to the Gaol the Prisoner escapeth, the Escape shall be adjudged upon the Sheriff, and not upon the Town. 3 E. 3. Fitz. Cor. 337.

By the Statute of 3 E. 1. cap. 9. if any Sheriff for any cause shall conceal any Felony done within their County; or shall not attach or arrest such Felons within their County, as they may, they shall be imprisoned for one year, and fined at the King's pleasure. *Felon nient attach.*

If any Sheriff or Gaoler shall deny to receive any Felon, by the delivery of any Constable or Township, or shall take any thing for the receiving of such, they shall be fined by the Justices, &c. 4 E. 3. cap. 10.

If a Felon be arrested by a Constable, and carried to the Gaol of the County, and the Gaoler will not receive him, and the Constable letteth him go, and the Gaoler also, and so he escapeth, this is an Escape in the Gaoler, for that in such case the Gaoler is bound to receive him by the hand of the Constable without any Precept of the Justice of Peace: And quære if it shall not be said to be a voluntary Escape, and so Felony in the Gaoler.

But otherwise it is if a common person arrests another upon suspicion of Felony, there the Gaoler is not bound to receive him without a Precept of some Justice of Peace. *Terms del Ley*, tit. Escape.

If one be found in arrearages before Auditors, and the Auditors bring the Accomptant to the next Gaol, and the Gaoler will not receive him, the Auditors may let the Accomptant go at liberty, and notwithstanding the Master or Lord of such Accomptant shall have his Action of Debt against the Gaoler, and if he be not able to answer the Debt, the Sheriff shall be answerable, according to the Statute, Lectur.

Every Sheriff ought to certifie in a Balender the names of all their Prisoners which be in their Gaol for Felony, at every Assises of Gaol-delivery, sub poena 5 l. hic 143, 144.

*Levy Money pur  
Escape.*

If the Sheriff, or any other, do take or levy any thing for the Escape of any Felon, before it be adjudged by the Justices in Eyre, Justices of the King's Bench, or before some other Justices that have Authority to enquire thereof, he shall restore to the party, or to him that paid it, as much as he received, and besides as much to the King, Westminster. 1. 4. & 31 E. 3. c. 14. Et hic cap. 14.

*Escape del  
Dettor.*

If the Sheriff do suffer any Bailiff, Chamberlain, Servant, Receiver, or other Accomptant to go at Liberty, which is committed to Prison by Auditors; or if the Sheriff shall bail, or otherwise deliver them without the consent of their Master, the Sheriff shall answer the whole Debt or Damage which the Master hath sustained by the said Accomptant.

So if a Gaoler shall suffer any such Bailiff, &c. or other Accomptant which is committed to Prison by Auditors, to go at Liberty or to escape, if the Gaoler be not able to pay and answer the Debt, the Sheriff that committed the Custody of the Gaol unto him shall be answerable.

And so it seemeth in all Cases of Escape, the Gaoler or Under-Officer who hath the actual possession of the Gaol or Office, shall answer for all Escapes: But if they have not sufficient wherewithal to answer, respondeat Superior, sc. he which committed or granted the custody of the Gaol unto him, shall answer it. 9 Co. 98.

If the Sheriff arrest a man by force of a Capias, awarded to bring him at a certain day returnable, if there the Plea shall be discontinued by the death of the King, or by the not coming of the Justices, or by any other means, then the Sheriff may suffer the same person to arrested to go at large (of his own authority) for that that Record is determined: But otherwise it is where the Sheriff hath arrested one by force of a Capias ad satisfaciend', for here the Record always remains. Keil. 2.

And if a Man be taken in Execution upon a Capias ad satisfaciend', and is committed to the Gaol, and the Sheriff suffereth him to make an Escape, the Sheriff is chargeable for the whole Debt, hic. fol. 8. 50. 56. (*Uncore si le Vic. ne return le brief, le Plt. poet aver novel Execution vers le Dettor; & pur ceo le Vic. poet forbear de Return ceo; & de compound ove le Plt. 3 Co. 52.*)

So if his Under-Sheriff, or any of his Bailiffs having taken one in Execution, suffereth the Prisoner to escape; or if the Prisoner of his own wrong breaketh away, or if the Prisoner be rescued by Strangers; in these Cases the Sheriff himself shall be charged for the Escape, and shall be chargeable to pay the whole Debt: For the act or default of their Under-Sheriffs, Deputies or Bailiffs shall charge the Sheriff himself. See the Stat. 1 R. 2. c. 12. & 7 H. 4. c. 4. Fitz. 93. c. & Br. Officer 24. & 33. & hic antea fol.

And it is no good Return for the Sheriff, quod mandavit Ballivo itineranti, que respondit que il arrest le party, & rescous est fait; for this was the arrest of the Sheriff himself: And if the arrest were upon a Capias ad satisfaciend', or Capias utlagatum after Judgment, and that a Rescous be made upon the Arrest, whereby the party arrested Escapes, the Sheriff himself shall be charged for the Escape, &c. except it were by the King's Enemies: But if it had been by Bailiff of a Franchise, the Return had been good, and there a Non omittas should have gone out. Dyer 241.

Note, that in case of such a Rescous, the Sheriff must take his remedy

remedy by Action of the Case, against them which made the Rescous (Dyer 241.) and they many times little worth, and so the Sheriffs remedy in such case is very easie.

*Uncore si un soit in Execution sur un Condemnation, & le Prison happe d'estre enfreint per Enemies le Roy, ou per sudden tempest, ou fire, le quel est le act de Dieu, ou per tiel force ou vehement power que le Officer ou Gaoler ne poet resist eux, donque ceo est bon plea, &c. Mes si le Prison serra enfreint per Rebels, ou Traitors deins le Realm autrement est, pur ceo que il poet aver remedy ouster envers eux come avant dit, 33 H. 6. f. Dyer 66. pl. 15.*

A Man attainted of Felony and imprisoned for it, brings an Action of Debt against him, and hath Judgment and Execution against A. and after A. got his pardon, and the Gaoler suffered to go at large, whereas upon C. brought an Action of Debt against the Sheriff for the Escape, and it was judged maintainable; so that notwithstanding that A. were attainted, yet he was also in Execution for the Debt. This was one Croft's Case, and so adjudged in the Exchequer, Tempore Eliz. Regine.

Now what other Acts shall be said to be an Escape, which shall charge the Sheriff.

Crompt. 204. b. The Sheriff or his Officers have one in Execution for Debt, and after carrieth the Prisoner into another County to talk and take order *Escape del Detter.*

with his Creditor, this is an Escape. Vide Dyer 296.

Crompt. 206. a.

The Sheriff, &c. having one in Execution for Debt, takes Bonds of the Prisoner, and of divers others, to pay the said Debt or Sum at a certain day to the Sheriffs Son, or other friend, and then lets the Prisoner go at large, this is an Escape.

The Sheriff upon a Capias ad satisfac' returneth a Capi Corpus, but hath not the Body at the day, &c. he is chargeable for an Escape, hic 69, 82.

So if upon a Fieri fac' he returneth Fieri feci, but hath not the Money at the day, he is chargeable for the Money, hic 69.

The Sheriff (or his Officers) arrested one upon a Capias ad satisfac' and do not return the Writ, this is an Escape. Crompt. 207. a. & hic fol.

The Sheriff, &c. hath one in Execution for Debt, and then licenseth the Prisoner to go at liberty for a time, and then to return, who returneth accordingly at his day, yet this is an Escape. 3 Co. 44.

If the Sheriff, &c. shall suffer the Prisoner (which is in upon Execution) to go at large, although it be by Bail or Mainprise, or by Waston (i.e. with a Keeper) before the Prisoner hath agreed for his Debt, this is an Escape; for such Prisoners ought to be kept in salva & arcta custodia. See the Statutes 1 R. 2. cap. 12. & 7 H. 4. cap. 4. & 3 Co. 43, 44. & Pl. 36, 37.

See Dyer f. 278. where a Man being in Execution for Debt in the Marshalsey was suffered by Gawdy, Deputy of the Prison (under the Duke of N. Marshal of England) to go into Norff. with a Keeper for a certain time, and the Prisoner came and returned again to the Prison at the day assigned; the Plt. brought his Action of Debt against Gawdy upon this Escape, and it was adjudged against Gawdy, and the Plt. recovered, &c.

Note, that by Law a Prisoner, who is in upon an Execution, ought not to be suffered to go at large or at his liberty, neither within the Prison, nor without the Prison, although it be with his Keeper. And Anno 24 H. 8. in the Star-Chamber, all the Keepers of Prisons in London were enjoined upon pain of 100 l. not to suffer any of their Prisoners to go at liberty within or without Prison. Dyer 249.

But

But if a Prisoner who is in upon an Execution, shall of his own head and wrong go at liberty, and after shall return again, and shall yield himself Prisoner, or shall be taken again by the Sheriff or Officer upon fresh sute (before any Action be brought by the Plaintiff against the Escape) this is no Escape. See 3 Co. 44. & 52. & hic fol. 57.

Co. Ibid. Br.  
Escape 4. & 35.

And so if one in Execution for Debt, shall of his own wrong escape into another County, and the Sheriff, or his Officers, shall there take him again upon fresh sute, and before any Action brought, &c. this is no Escape.

If one in Execution for Debt, be set at large by the Act of any of the King's Courts, (sc. by the King's Writ from out of any of the King's Courts) this is no Escape which shall charge the Sheriff, except it be in some special Cases. See 38 E. 3. fol. 8. & 2 E. 4. 8. Crompt. 215. & hic fol. 58.

See the Case of a Burgess of the Parliament delivered by a Writ of Privilege, &c. Dyer fol. 60. & hic cap. 21.

And yet upon a Writ de Homine repleg', the Sheriff delivers a Prisoner who is in for Redisseisin, the Sheriff shall be amerced, hic fol. 46.

So if the Sheriff or Gaoler shall suffer his Prisoner who is condemned in arrerages before Auditors to escape, or shall deliver him upon a Writ de Homine Repleg' or otherwise without assent of his Master, the Sheriff or his Gaoler shall pay the Debt, hic cap. 21. & Dr. & St. 134.

*Le Stat. de Westm. 2. cap. 11. done action vers le Gaoler que lessa hors del prison cestuy que est commit a luy pur arrerages de accompt, Et per le Equity de ceo Stat. Action de Debt gist vers chescun auter gardein sur chescun auter condemnation in Debt, ou auter action, s'il lessa le party commit al eux sur tiel Condemnation d'aler alarge, Pl. 37. a. & 178. a. Br. Parliament 19.*

<sup>1</sup> *Et si le Gaoler ou gardein n'est suffic' respondeat superior, &c. Issint que apres que tiel prisoner est un fois Escape le Creditor ne unques demandra ses deniers de le party qui suit in prison, mes vers le Gaoler ou Viscount. Tamen l'officer poet luy reprendre apres.*

And if one in Execution for Debt be set at liberty, or suffered to go at large by the Sheriff or other Officer, upon the commandment of any of the King's Courts without Writ, this seemeth to be an Escape. See hic fol. 58.

*Si un in execution pur det, soit suffer daler alarge per le Vic' ou auter Officer, sur commandment del Roy mesme, sans brief, semble desse une escape. See Dyer 297. hic fol. 58.*

A Man in Execution within the Cinque Ports was brought up to London, &c. upon a Privy Seal, or the like, this is no Escape. 30 H. 6. fol. 6. Br. Escape 44.

A Man is in Execution for Debt, and a Woman being Warden of the Fleet marrieth the Prisoner, this is an Escape, for that he cannot be his own Prisoner, nor a Prisoner to his Wife. Pl. 36.

A Woman is in Execution for Debt, and the Sheriff or Gaoler marryeth her, this seemeth to be an Escape.

Le

*Le garden del Fleete lessa son Office al'un pur ans, & puis esteant en prison pur Dett en Londres, & remove in Common Bank per Habeas Corpus, & la pur ceo Execution, & auxi pur auter, est commit al prison del Fleete, Et apres, Lessée pur ans surrender a luy, ou le terme finye, per ceo le Execution est discharge: uncore en le primer Case de Surrender, Dett gist (sur ceo Escape en Ley) vers le Lessée: Mes en l'auter case quare vers que l'action de Dett serra. Issint lou un in Execution, & puis le Office (del Fleete) descend a luy, Ore est Hors de Execution; tamen quare sil serra pur ceo charge en Dett. M. 29. Eliz.*

Note that if a prisoner, being in upon an Execution, shall escape of his own wrong without the consent of the Officer, there the Officer may take him again at any time, hic fol.

Note also that if a man who is in Execution upon a Statute, or Recognizance, shall happen of his own wrong to escape, yet the Sheriff may extend his Lands and Goods upon the same Statute, &c. 33 El. Also see Co. 3. 44. & 5. 86.

If the Sheriff shall seise any Land, or do many other things without Writ, Commandment of the Justices, or other lawful Warrant, he may soon bring himself into danger. See hic cap. 126. & cap. 6. 7.

If any Sheriff, &c. shall levy any of the King's debts, without shewing to the parties the Extreats of the same under the Seal of the Exchequer, they shall lose to the party grieved treble damages, and also make fine to the King. 42 E. 3. c. 9. & 7 H. 4. cap. 3.

If any Extreat of Issues shall be gathered of any person, other than of such as by vertue of the said Extreats shall of right be chargeable, or charged therewith; the gatherer thereof shall lose five Marks to the party grieved, and five Marks to the King, 27 El. cap. 7.

3 E. 1. c. 19. A Sheriff who hath received the King's debt, if at his next assizes K. Debtor, compt he shall not discharge the Debtor, he shall pay to the Plaintiffs thrice as much as he received, and also shall be fined to the King, See hic antea.

13 El. c. 6. If any Sheriff, &c. shall make any Warrant for the Arresting Attaching, or Summoning of any person without an Original Writ, &c. they shall be committed without bail, until they have paid 10 l. to the party grieved, besides costs and damages, and also 20 l. to the King.

23 H. 6. c. 10. If any Sheriff, &c. shall omit any Arrest, or shall shew any ease or favour to any person Arrested or to be arrested (at any mans sute) for any Reward.

Or shall take any fees, or other thing, for any Arrest, &c. more than their due: See hic fol.

Or (upon any Arrest) shall take any Obligation by colour of their Office, but only to the Sheriff himself, and by the name of his Office, and upon condition only to appear according to the Writ or Warrant:

Or shall detain any prisoner, or person by them Arrested, being bailable, after sufficient sureties offered:

Or if the Sheriff hath one in prison, or committed to him untill he do find sureties for the peace, or good behaviour, and he suffereth him to go at large before he be bound with sureties, &c. he shall forfeit 40 l. by the stat. of 23 H. 6. Crompt. 139. 140.

Or shall do any other thing contrary to the Statute of 23 H. 6. c. 10. in any point, they shall lose to the party grieved treble damages and shall also forfeit for every such offence 40 l. to the King and Informer.

*Action*

*Action sur le Case vers Powel vic. & declare que le Plt. deliver Capias ad satisfac. al dit. P. vers Owen, Et que apres le delivery & devant le retourne del brief le dit O. fuit souvent foits en le company del dit P. il conusant le dit O. d'estre mesme le party, &c. Et uncore nemy ad luy Arrest, mes ad Return Non est inventus, Et fuit trouve par le Plt. Et per Cur. le Plt. ad deux causes de action vers Powel, lun le Non arrester, Et l'auter le faux retourne de Non est inventus. Hill. 15 Jacobi Regis.*

If any Sheriff shall imprison any man for any matter inquireable in their Town, except such as have been indicted there by Censquest, &c. an Action of false Imprisonment lieth against the Sheriff. 13 E. 1. c. 13. See the Statute 1 E. 4. c. 2.

If any Sheriff, shall suffer any barretors, or maintainers of quarrels in their County Courts, they shall be grievously punished. 3 E. 1. c. 32. See hic fol. 16.

If any Sheriff, &c. have arrested or imprisoned, or caused any fine or ransom, or amercement to be levied of any person, by reason of any indictment or presentment made in the Sheriffs Town, without Process from the Justices of the Peace for the same first obtained, they shall forfeit one hundred pounds, &c. <sup>1 E. 4. c. 2.</sup>

If any Sheriff (or his Deputy who keepeth the Sheriffs Town) hath not brought in, or certified such indictments, and presentments (taken in the Town) to the Justices of Peace at their next Sessions, they shall forfeit forty pounds. Hic fol. 155. <sup>Ibid.</sup>

Justiciar' non potest puniri pro re per ipsum facta judicialiter, sed Officiarij, ut viccomes Officiarij de recordo erunt puniti. 2 R. 3.

*Action sur le case gift vers vic. & auters Officers de Record, s'ils font faux Record, Ou s'ils cause faux Entre d'estre fait, vel hujusmodi. 9 H. 6. Crompt. 122.*

*Issint si vic. fait faux Returne.*

Sheriffs, &c. procuring, or soliciting lutes in their Courts, shall make fine to the King, and yield treble damages to the party grieved. 13 E. 1. cap. 36.

If any Sheriff, &c. shall enter into their books, any complaints (for debt, trespass, or covenant, &c.) in any mans name, not being present at the Court, either in his own person, or by his sufficient and honest Attorney or Deputy: <sup>11 H. 7. c. 15.</sup>

Or shall enter any more complaints, than the Plaintiff supposeth that he hath cause of action for:

Or if the Sheriff shall suffer the Plaintiff to enter more than one complaint, for one trespass, debt, contract, or cause:

Or if the Sheriff shall not cause the Plaintiff to find pledges to pursue his said complaint, &c. such persons as are known there in that County:

Or if the Bailiff of the hundred shall make default in Warning, or Executing any Warrant against any Defendant in the Sheriffs Court:

Or if the Bailiffs, or other person shall gather the Sheriff Amerciaments (or Shire Amerciaments) without a book or Estreats Indented between the Sheriff, and two Justices of Peace, &c.

Or if the Bailiffs, or gatherers of the Sheriffs Amerciaments shall take, or gather more money than is forfeited and contained in such Estreats.

Every Sheriff, Bailiff, and other officer, offending in the premises, and being thereof lawfully convicted, &c. shall forfeit to the King forty shillings for every such default.

If any Sheriff, or any other, shall bail, or let any go at large by

by Surety, that is not baileable, if he be Sheriff, or Officer of the Fee, *Bailment*, he shall lose his Fee and Office for ever: And if they be not Officers of the Fee, whosoever they be, they shall be fined by the Justices of Goals-delivery. 3 E. 1. c. 15. 27 E. 1. c. 3. Fit. 251. j. And by the Statute of 23 H. 6. c. 10. the Sheriff bailing one who is not baileable, shall forfeit forty pound to the King, and treble Damages to the Party grieved.

If any Under-Sheriff, or Bailiff, of such as have Fee, for keeping of Prisons, do it contrary to their Lord's Will, or any other Bailiff being not of Fee, they shall have three Years Imprisonment, and make Fine, &c. or shall not bail or deliver. *Ibid.*

23 H. 6. c. 10.

If any Sheriff, &c. shall detain, or shall not bail or deliver a Prisoner that is baileable, after that the Prisoner hath offered sufficient Surety, he shall be grievously amerced to the King, by the Statute 3 Ed. 1. c. 15. And by the former Statute of 23 H. 6. he shall lose treble Damage to the Party, and forty Pound to the King and Informer.

And if any Sheriff, &c. shall take any Reward for the deliverance of any such as are baileable, he shall pay double to the Prisoner, and shall be in the Mercy of the King.

If the Sheriff will not obey a lawful Superedeas, but will arrest the Party, &c. an Action of *Faux Imprisonment* lieth, &c.

So if the Sheriff, (or other Officer) hath taken the Party before the Superedeas came to his hands, and then will not deliver him.

Sheriffs, and their Officers are also punishable for Extortion in taking any Fees more than their due. *See hic fol.* *Extortion.*

And if they take any Fees, &c. contrary to the Stat. of 23 H. 6. they shall lose to the Party grieved his treble Damages, and besides shall forfeit forty pound to the King, &c. *Ibid.*

Note, that this Extortion in Sheriffs, and other Officers, is the greater Offence, in that it is not only contrary to their Oaths, and so Perjury in them, but also it is a kind of Robbery committed by them, by colour of their Office, and as a great loss to the King's Subjects (by them so wronged) as to steal their Goods from them.

If an Officer cometh to a Man, and telleth him, that he is outlawed, when the Officer knoweth that he is not outlawed, and by colour thereof the Officer taketh his Goods, this is Felony, by the Opinion of Mr. Cock in his Reading.

So if the Sheriff's Officer shall levy any Duty for the King without Warrant. *Ibidem.*

And yet there seemeth a Difference where the Officer hath Authority by reason of colour of his Office, and exceeds his Authority, there it is but extortion and fineable; as where the Sheriff, or Officer, hath a Precept to levy xx. pound of the Goods of I. S. and he levyeth lx. pound, this is Extortion: But where he hath no Authority, it shall not there be intended, that he doth that by colour of his Office, but in such case it is Felony in the Officer. *Ibid.*

And again this Difference may be taken, sc. where the Officer without Warrant or Authority shall levy any Duty for the King, and shall after accompt for the same in the Exchequer, or otherwise pay the same to the King's use, there the Officer seemeth chargeable but as a Trespasser; but if he shall convert the same to his own private, or proper use, there it is Felony.

Sheriffs ought to array their Pannels for the Assizes, six days before, *Juries*, &c. Sub poena forty pound.

Also they shall deliver Copies indented of such Pannels as they return for Trials, to each party demanding the same, upon pain of forty pound. See hic cap. 85.

If the Sheriff shall not return Pannels, as they be reformed by the Justices, they shall forfeit twenty pound. hic ibid.

If any Sheriff, or any of his Officers, shall return upon any Jury, any of their Officers or Servants, they shall lose to the party grieved treble damages, and shall also forfeit forty pound to the King and Informer. 23 H. 6. c. 10. hic cap. 85.

If any Sheriff, &c. shall return upon any Jury, any Person that is decrepid, or diseased, or such as dwell out of the County, or Men insufficient, or Labourers, &c. they shall yield damages to the party grieved, and be amerced to the King. See hic cap. 85.

If any Sheriff shall return upon any Jury, any persons suspect and of evil fame, and be thereof convict, they shall be punished by the Judges of the Assize, &c. 20 E. 3. c. 6.

If any Sheriff &c. shall take any Reward to spare any Juror, or for not warning, or not returning of any Person to be sworn as a Juror, &c. they shall forfeit five pound to the King and informer, 27 El. c. 6.

If any Sheriff, &c. shall return any Juror without a true addition of his dwelling, &c. he shall forfeit five Marks to the King, and five Marks to the party grieved. 27 El. c. 7. vide hic c. 85.

They shall forfeit twenty Shillings for every Hundred, if six be not returned, &c. hic cap. 85.

They shall forfeit five pound, if they take any reward, &c. to spare any Juror, hic cap. 86.

They shall forfeit twenty pound for not returning sufficient Jurors to enquire of Riots, hic cap. 87.

*Issues.*

If any Sheriff, &c. shall levy any Issues without Warrant, &c. he shall yield treble damages to the party grieved, and be fined to the King. hic cap. 90.

If the Sheriff, &c. shall return Issues upon one who is not sufficient, he himself shall be charged therewith. See hic cap.

If the Sheriff, &c. shall return any Juror, or any Issues upon any Juror, &c. who was not lawfully summoned, &c. He shall lose to the Juror double so much as the Issues lost by such Juror, &c. hic cap. 90.

If the Sheriff, &c. shall not return due Issues upon every Juror, the Sheriff shall forfeit five pound in some cases, and in some cases twenty pound, and in other forty pound. hic Return of Issues.

If the Sheriff, &c. shall levy any Issues, other than of such Persons as of right are chargeable, he shall forfeit five Marks to the King, and five Marks to the party. hic cap.

If the Sheriff, &c. shall return too small Issues upon the Defendant; or shall return no Issues, he shall be amerced, &c. Fitz. Amercement 3. Br. 86.

*Outs.*

If any High-Sheriff shall exercise his Office before he hath taken his Oaths, &c. he shall be fined in the Star-Chamber, and be imprisoned, &c. hic fol.

If any Under-Sheriff, or other the Sheriffs Officers, &c. shall exercise their Offices, before they have taken their Oaths, &c. they shall forfeit forty pound, &c. to the King and Informer, hic fol. 175.

If any Under-Sheriff, or other Sheriffs Officers, &c. shall do or commit any act or thing contrary to their Oaths, they shall lose to the party grieved treble damages. 27 El. c. 12. hic 175.

If the High-Sheriff shall not perform his Oath concerning his

his Office, it seemeth he is Fineable in the Star-Chamber. See hic fol.

If any Sheriff shall let or farm his County, or any of his Bailiffs *Their Office.* wick, he shall forfeit forty pound to the King and Informer, &c. 23 H. 6. c. 10. hic fol. Besides his danger to be punished in the Star-Chamber for Perjury.

If any Sheriff, Under-Sheriff, Sheriffs Clerk, shall abtne in their Office above one Year, they shall forfeit to the King and Informer two hundred pound, hic fol.

If any Sheriff, or Under-Sheriff, which hath been so by one whole Year, shall be in that place again within three Years next ensuing, they shall forfeit, &c. two hundred pound.

If the Sheriff be not resident within his County, he is punishable, except he hath the King's License to that purpose.

If the Sheriff shall not appoint Deputies in every Court at Westminster, before he return any Writ, he shall forfeit forty pound to the King, &c. and treble damages to the party grieved, hic fol.

If he shall not appoint four Deputies (at the least) in his County to make Replevies, he shall forfeit to the King, for every Month, &c. five pound, hic fol.

If he shall not put in sufficient Sureties (by Recognisance) in the Exchequer, &c. before he exerciseth any part of his Office, he shall forfeit one hundred pound. See hic fol.

If he shall neglect to execute his Office, by reason of resistance; or shall return that he could not execute the King's Process for resistance, he shall be amerced, hic fol. 19. 136.

If the Sheriff shall not enter a Franchise to execute the King's Process, where there is default in the Bailiff of the Franchise, the Sheriff shall lose to the party grieved double damages. See hic fol.

If the Sheriff shall not in every behalf execute the King's Process, or other Warrant directed to him, he shall be punished. As

If the Sheriff shall remove a force, and shall not imprison the Offenders, here for not performing all which he is commanded by the Writ or Precept, he shall be punished. Crompt. 73.

If the Sheriff shall serve part of the Process, viz. he shall distrein certain Jurors, and shall command the Bailiff of the Franchise, to distrein the other, he shall be amerced, for the Commandment was entire. 19 H. 6. fol. 38. Vide hic cap. 39.

If the Sheriff shall do more than he is commanded by the King's Writ, he is also punishable. Crompt. 74. & 162.

As if the Sheriff shall remove a force upon the Writ of Northampton, and shall put the party (put out) in possession again, he shall be therefor punished in the Star-Chamber; for he had no Authority by the Writ, but only to remove the force. *ibid.*

Also in divers Cases, if the Sheriff shall not execute the King's Writ, an Attachment shall go out against the Sheriff, which shall be directed to the Coroners of the same County, &c.

If the Sheriff, &c. or his Officers, shall distrein (for the King's Debt, *Distress.* or otherwise) any Plow, Cattel, or Sheep:

He shall take any excessive Distresses:

He shall give any Distresses too far:

He shall sell any Distress (taken for the King's Debt) within fifteen Days.

He shall not shew, the Process of the Exchequer, for the levying of the King's Debt, upon demand.

He shall not deliver the distress, the party offering sufficient Sureties, &c. before the return of the Writ:

In all these former Cases the Party (as it seemeth) may have an Attachment upon the Statutes, or else an Action of Trespass, against the Sheriff, or Officer. See hic fol. 23.

If the Officer upon a Replevy shall take one Man's Horse, Bullocks, or other thing for anothers, he is a Trespasser, hic fol.

If the Sheriff, &c. shall make Replevy of any Goods, or Cattel, and shall not take Pledges, de prosequendo, Ac de retorno habendo, &c. he shall answer the Price, &c. hic & Fitz. Amercements, fol. 2.

If the Sheriff, &c. shall seize the Lands, or Goods of one Man for another Man, &c. the Party grieved shall recover double Damages, 8. & 10. hic 36.

If the Officer upon a Fieri Facias, shall deliver in Execution, any Goods which are not the proper Goods of the Defendant, he is a Trespasser, &c. hic fol. 58.

Arrest.

If the Sheriff, &c. shall arrest or attach one Man for another, he is a Trespasser, &c. hic fol. 47.

If the Officer shall arrest one without a Warrant, tho' after he hath a Warrant, &c. yet he is a Trespasser, hic fol. 47.

If the Officer shall arrest any Minister in the Church, &c. he shall be imprisoned and yield recompence to the party, hic fol. 48.

Note, by a late Statute, no Arrests are to be made upon a Sunday, under very severe Penalties.

If upon an Arrest to be done, the Sheriff or his Officer shall take any thing to omit the Arrest, or otherwise not to do their Duty, they shall forfeit Forty Pound, and shall yield to the Party grieved treble Damages. 23 H. 6. c. 13.

Every Knight of the Parliament, Burgefs, Baron of the Cinque Ports, and other Persons called to the Parliament, shall have the Priviledge of the Parliament, during the Sessions of Parliament; so as whosoever shall arrest any of them during that time, shall be imprisoned in the Tower (by the Peacher House whereof such Person is, &c.) and shall be fined: And the Sheriff, Coaler, or other Keeper, &c. shall also be imprisoned and fined, if they shall not deliver him, whenas a Serjeant of Arms shall come for him by the Commandment of the House. Dyer 61 Cromp. *Author des Courts* 9, 10.

And yet if one that is Outlawed shall be of the Parliament House, and a Capias Uelagatum be sued out against him, and delivered to the Sheriff, he may safely arrest him thereupon; for this Writ is, Quod non Omittas propter aliquam libertatem: So that the Party outlawed cannot be discharged thereof by any Liberty or Priviledge (for he which is out of the Law, and out of the Protection of the Law, cannot have the Priviledge of the Law.) But a Person Priviledged by being of the House, cannot be arrested by a Writ, or upon a Writ of Execution, or the like. Per Anderson & Periam Justices Ter. Hill. 31 Eliz.

If the Officer shall not arrest a Man when he may (he having Warrant therfore) an Action of the Case will lie against him, and the Party grieved shall thereby recover in Damages all that he shall lose thro' such default of the Officer. hic fol. 123.

Also the Sheriff shall be punished for his delay, in not executing of Process delivered to him, &c. hic.

If upon a Capias ad respond. the Sheriff shall arrest the Body, but returneth not the Writ, the Party arrested may have his Action of false Imprisonment against the Sheriff. And if the Sheriff shall return the Writ, but shall not bring in the Body at the Day, then he shall be amerced. Kie! 3. hic cap. 37.

Br. Officer 40.  
13 E. 1. c. 39.  
Fitz. Execu-  
tion. 248.

So if a Man be taken upon a Capias, and yet the Sheriff returneth, *Retorne.*  
Non est inventus, an Action of false Imprisonment lieth against the Sheriff that took or arrested him.

Also upon a Writ directed to the Sheriff upon the Statute of 31 H. 6. cap. 9. for the enforcing of Women to enter Bonds, &c. if the Sheriff shall not duly execute the same, he shall forfeit three hundred Pound. See the Statute at large, & P. Women 15.

Note, that the Sheriff ought to execute the King's Writ at his peril, altho' resistance be made, otherwise he shall be grievously amerced; and besides, the Party shall have his Action against him, if the Writ be not executed, for he might have taken the Power of the County to have aided him, &c. See hic 16. 65.

The Sheriff shall be amerced, for not returning, misreturning, or false returning of a Writ. See Fitz. Amercement 4 & 18. 5 El. 23. & 6 R. 2. cap. 4. & hic fol. 44. 50. 70. 71. Dyer 198. Co. 5. 90.

Also an Action of the Case will lie against the Sheriff if he shall make a false Return, by Roads Justice, Anno 28 El. with whom agreeth the Book of Entries. tit. *Accon. sur le Case in Retor. div. 1. & 2.*

Or the Sheriff, for not returning, misreturning, or false returning of a Writ, may be Indicted. See Fitz. Just. of Peace, fol. 67. The form of an Indictment against the Sheriff, for returning, Quod nihil habet, ubi pars sufficiens est.

Also in the Registr. par. 2. fol. 31, 32, 67, & 82. you shall find several Writs (directed to the Coroners) ad Venire facias vicecomitem, ad respondendum, Quare non returnavit brevia; or ad respond. de falso retorno, or super retorno Tarde, &c.

He shall be amerced for imbezling the Writ; or for returning of another, which was not the Writ. Fitz. Amercement. 5. Disceit. 11. & Br. Amerc. 45.

The Sheriff imbezelled an Exigent which was delivered to him of Record, and wrote two others, and returned them without Sealing, and for this fault he was amerced at one hundred pound. 5 E. 4. Br. Retur. 95.

A Sheriff returning a Mandavi ballivo libertatis, where there is no Liberty, he shall be punished as a Disinheritor of the King. hic fol.

A Sheriff maketh his Precept to one which is not Bailiff of the Franchise, &c. he shall be amerced. 38 Ass. 13.

A Sheriff maketh his Precept ballivo Libertatis, where the King is a Party, he shall be amerced.

If a Writ de Excom. capiendo, (being delivered of Record to the Sheriff, or to his Deputy, in Court) shall not be duly returned; or that by any other negligence or default shall be used in not well serving and executing the same Writ, then the Justices shall assess such Amercement upon the Sheriff, as to the said Justices shall be thought meet, &c. 5 El. c. 23.

And if the Sheriff maketh a false return upon any Capias in a Writ of Excom' capiendo, &c. he shall forfeit to the party grieved forty pound, hic cap. 36. 5 Eliz. c. 23.

The Sheriff amerced at fifty Marks for his false return of an Exigent, hic 75.

A Sheriff was fined at forty Pound by the Justices of Nisi prius, for not returning the Writ de Habeas corpora Jurator. &c. 20 H. 6. fol. 33.

But upon a Writ to enquire of Damages, if the Jury will find no Damages, and the Sheriff returneth accordingly, tho' such return be not good, yet the Sheriff shall not be amerced for this default of the Jury. Br. Return. 20. Fitz. Retor. 66.

Sheriffs

Sheriffs misreturning, or not returning any Writ to them directed and delivered, concerning the levying of the King's Debt, Rents, Revenues, or Issues, &c. they shall pay such Fines and Amercements, as shall be assessed upon them by the chief Officers of the King's Courts of Revenue, &c. 7 E. 6. c. 1.

A Sheriff returneth a Writ without setting his Hand thereto, he shall be grievously amerced, hic fol. 74.

Sheriffs shall be amerced for the default of their Under-Sheriffs, or Bailiffs, in making false or insufficient Return. See hic titulo Return fol.

Sheriffs not making due Election of Knights for the Parliament, or returning Knights, &c. of the Parliament falsly, or contrary to the Statutes, shall be imprisoned for one Year, without Bail, and besides shall forfeit to the King one hundred pound, and to the party chosen Knight, &c. and not returned, another hundred pound, hic 131.

Sheriffs not attending the Service for the Assessing of Wages of the Knights of the Parliament, shall forfeit 40s.

If they shall not assess every Hundred and Town thereto, according to the Statute, they shall forfeit thirty pound.

If they shall levy upon any Town more than is so assessed, they shall forfeit thirty pound.

So if they shall not deliver the same, &c.

Sheriffs shall be punished in the Star-Chamber for their untrue Dealings in making of Pannels, and other untrue Returns, or for taking undue Fees, or Bribes, 3 H. 7. cap. 1. P. Courts 4.

Purveyor.

If the Sheriff, upon Request, shall not aid, and assist him from whom any Cart, of any Noble-man, or other Subject, shall take any Goods, or Carriage, against the Will of the Owner, the Sheriff shall forfeit to the King, and party grieved, &c. twenty pound. hic fol. 15.

Rioters.

If the Sheriff, or Under-Sheriff, shall not joyn with the Justices of Peace, in executing the Statute of 12 H. 4. against Rioters, i. e. to arrest the Rioters; to make a Record of that which they shall see so done; and to imprison the Offenders, they shall forfeit one hundred pound. hic fol. 15.

If the Riot cannot be found by the Justices of Peace, &c. then within one Month the Justices of Peace, and the Sheriff, or Under-Sheriff, shall certify the Fact and Circumstances to the King, &c. upon pain of every of them to forfeit one hundred pound. hic fol. 15, 16.

If the Riot be not found, by reason of any maintenance, or embracement, &c. then the Justices and Sheriff, or Under-Sheriff, in the same Certificate, shall also certify the Names, and Misdoemeanors of those Maintainers and Embracers, upon pain of every of them making default to forfeit 20 pound. hic fol. 15.

Sheriffs which shall not arrest all Persons that ride, or go armed, &c. shall be punished by the Justices of Goal-delivery, &c. hic fol. 2 E. 3. c. 3.

If the Sheriff shall not execute the Precepts of Commissioners of Sewers, &c. they may assess and impose Fines, &c. upon the Sheriff. hic fol.

Servants and Labourers departing into other Shires, if the Justices of Peace do grant out any Process against them, the Sheriff is duly to execute such Process upon pain of twenty pound. 2 H. 5. c. 4.

If the Sheriff shall not duly execute all Process and Precepts, as shall come to him from the Justices of Peace, he is punishable, &c. See hic 144.

Note, that the Justices may commit the Sheriff to Prison for an offence done before them, and they may make or appoint another Officer (for the time) to keep him. Martin 8 H. 6. 60.

A Bailiff being indicted of Extortion, his Rod was taken from him, and he was committed to Prison without Bail, &c. 42 Ass. p. 5. Br. Comm. 15.

Sometimes the Sheriff, or other Officer shall be punished for executing their Warrant.

As where the Court (out of which the Process or Warrant shall come) hath not Jurisdiction of the Cause, and yet shall grant out Process, &c. and the Sheriff, or other Officer shall execute the same, they are punishable: See hic fol. 45, 46.

If the old Sheriff, after that he is discharged, shall make his Warrant to arrest another, and the Bailiff shall execute this, a Writ of false Imprisonment lieth as well against the old Sheriff, as the Bailiff which executed such his Warrant, &c. hic fol. 9 & 47.

C A P. CXXII.

Where the Sheriff for his Default shall be Amerced to the King, and also subject to the Action of the Party, and so twice punish'd for one Default.

If the Sheriff (upon a Capias ad satisfac' : Or upon the Exigent) returneth Cepi corpus, and yet hath not the body at the day, he shall not only be amerced, but the Plaintiff also may have an Action of Wrecce against the Sheriff, by an Original Writ; or else the Plaintiff may sue against the Sheriff in the Exchequer upon his Accompt. Br. Return 31 & 107.

The Sheriff upon a Fieri facias, returned quod fieri fecit x. l. parcell' de xx. l. in breve specificat', &c. And at the day had not the Posney, there the Court might amerce him, and besides after a new Sheriff was made, a Scire facias went out to the new Sheriff, against the old Sheriff, to have execution against him, &c. 9 E. 4. Br. Return 55.

If any Writ shall be delivered to the Sheriff, &c. and the Sheriff shall make return thereof, but shall not summon or warn the Defendant; or otherwise shall not serve the Writ as he ought, by reason whereof the Plaintiff or Defendant shall be in any sort damnified, he shall be amerced, and besides the Party grieved may have their Action of the Case, &c. against the Sheriff.

If any Sheriff, or his Officer (by colour of his Office) without special Warrant, &c. shall disseise any Man of his Freehold, the Disseisee may have his Writ of Novel disseisin, where he shall recover double damages; and besides, the Officer shall be grievously amerced to the King. 3 E. 1. cap. 24.

Note, that the words of this Statute are, Colore Officii: For there is a difference to be holden, where the Sheriff shall do a thing Colore, or virtute Officii, and where virtute brevis; for where he doth a thing virtute brevis, that is a sufficient Warrant to him, and which he is bound to obey, otherwise it is where he shall do it Colore Officii, per Choke 7 E. 4. 17.

So where the Sheriff shall do a thing by the Commandment of the Justices he is excusable. Fitz. Assise 373.

Mes

Mes si le vic. seise ters sans brief, ou Office, semble que il est disseisor sur ceo statute de Westm. 1. cap. 24.

Issint sur Office trouve nient suffic. Come lou les quantites del ters ne sont express, Ne les services per queux sont tenus, si le vic. seise tiels ters, sur tiel insufficent Office, dicitur que ill est disseisor; mes si le insufficiency soit per default de forme, auterment est.

Si brief vient al vic. dextender ters in A. & il extend ters in B. il est disseisor. Vide Fitz. verdit. 29.

Issint si brief vient a deliver ters que descend, & le vic. livra les ters purchase. Fitz. Assise 378.

Issint si brief vient de Extender ters queux fuer al A. & il extend les ters queux le feme A. ad in Dower, & as queux el avoit tite de Dower devant le Extent, le vic. est disseisor.

Vide Fitz. Assize, 162. le Officer adjudge disseisor. que liver le terr per garant sans nosmer cestuy que recover.

Si un soit Endite de felony devant le vic. (en son Torne) per que le vic. seise son terr, & apres est trouve devant le Justices que il ne fait le felony, le vic. est disseisor.

Si apres plea remove Hors del County Court, le vic. voile proceeder in ceo & agard Execution, il est disseisor. Fitz. Action sur Case 39.

A Man was indicted befoze the Sheriff (in his Tozn) whereupon his Lands and Chattels were seized by the Sheriff, and by Devon, the Sheriff had no Warrant by the Indictment to seize the Lands, and therfore advised the party to bring his Assise, &c. Fitz. Assize 373.

And therfore Sheriffs befoze they seize any Mans Lands, must have good warrant, or cause so to do. Vide hic fol. 19. 25.

Vide plus Br. Action sur le Case 48. 51. 53. & 121. & hic fol. precedente.

### C A P. CXXIII.

Where the Sheriff for his Default shall be subject to the Action of either Party, *sc.* of the Plaintiff and Defendant.

**I**F the Sheriff taketh one upon a Capias, and returneth not the Writ, the Plaintiff may have his Remedy by force of the Statute, 13 E. 1. c. 39. and shall recover his Damages; and the Defendant may have his Action of false Imprisonment. hic 70.

So if the Sheriff, &c. arrest one upon a Capias, and after returneth Non est inventus.

Upon a Fieri facias the Sheriff levieth the Money, but neither returneth the Writ, nor payeth the Money to the Plaintiff, here the Plaintiff may charge the Sheriff in an Action of Accompt, and the Defendant in an Action of Trespas. hic 70.

If any Sheriff, &c. shall return upon any Jury, any Persons which are not sufficient, &c. or contrary to the Statute, the Sheriff shall be subject to the Actions of the Parties Plaintiff and Defendant, as also of such Jurozs so returned. hic 120, 121.

## C A P. CXXIV.

Where the new Sheriff shall have an action Against  
his Predecessor for his false Return.

**T**he old Sheriff returned a Venire facias Jurat', and then was discharged, and Process continued to the distress, and the new Sheriff returned upon a Juroz, Nihil habet, and was therefore amerced, for that he ought to have pursued the first return of his Predecessor, and to have shewed the special matter, &c. And therefore if the Juroz were not sufficient at the first, the new Sheriff shall have an Action of deceit against his Predecessor. 19 H. 6. Br. Retorne 49. See plus Br. Action sur le case 53.

Where the Lord or Bailiff of a Franchise, shall have their Action against the Sheriff. See fol. 72. 73. 181.

## C A P. CXXV.

The abuses practised by some Sheriffs, Undersheriffs, and Bailiffs.

**S**heriffs have obtained often times upon their accompts, outrageous allowance, under pretence of the King's works and businesses. Stat. 51 H. 3.

They have (for reward, prayer, fear, or affinity) concealed *thes Felons*. Ions: Or have neglected to attach them. 3 E. 1. c. 9.

They have procured Prisoners to become approvers, &c. to appeal harmless and guiltless people of felonies; thereby either to get ransom of such appealed persons, for fear of imprisonment; Or else out of malice, or other cause: See the Statute 13 E. 1. cap. 12. & 1 E. 3. cap. 7.

They have feigned persons to be indicted of Felonies or other *Feigned In-Trespases* in their Towns, and have imprisoned them, and have *disfranchised* exacted money from them by colour thereof 13 E. 1. cap. 13.

They have procured Commissions and general Writs, and by colour thereof have made, and taken divers Enquests, and indicted people at their will, And then have taken fine and ransom of them to their own use, and so delivered the persons indicted, not bringing them before the King's Justices, &c. 28 E. 3. cap. 9.

They have solicited and procured lutes in the County Courts, *In their* compelling thereby poor men, &c. to follow their Courts, until *Courts* they have made fine with them at their wills. 13 E. 1. cap. 36

They have used to enter in their Books more plaints than the Plaintiff supposed he had cause of action for in their County Courts. 71 H. 7. c. 15.

And also more plaints than one for one debt, trespass, contract; or cause, to the vexation of the Subjects.

*Ibid.* Also many times in plaints entered before them in their Counties, the Defendants are never attached, summoned, or warned, and so for want of knowledge of such lutes against them the Defendants are unjustly punished and vexed.

§ 11

They

They have used to enter plaints in their said Courts, in the names of persons that were dead.

At this day they use in their said Court, that if the Def. be summoned, and thereupon maketh default of appearance, presently to grant out a *Levari facias*, to levy the Damages, and Costs, &c. whereas they should continue the Process against the Def. until he appear, *sc. a Distress infinite* (*hic cap. 12.*)

And the *Levari fac'* ought not to be granted out until the matter be found and adjudged against the Def. and not upon his default.

Also upon the *Levari fac'* the Sheriff or his Bailiffs do use to sell the goods so levied, whereas the Execution in this Court is only to distress the goods of the Def. and to put and keep them in pound, &c. until the debt be satisfied, *hic cap. 12.*

They have taken fines of the parties, for not pleading well, &c. *Fitz. 270. 52 H. 3. 11.*

*Bailment.*

They have bailed persons not bailable, whereby notable Felons and Offenders have escaped.

They have kept and detained in prison persons bailable, only to grieve or vex them; Or else to gain and get money of them. *3 E. 1. cap. 15.*

They have sent strangers to take distresses (whereas none but Bailiffs sworn and known ought to take distresses) thereby grieving their neighbors, and exacting money of them thereby, *13 E. 1. c. 37.*

*Juries.*

They return men upon Juries, which are decrepit, diseased, and dwelling out of the County;

And sometimes they return an unreasonable number; *hic fol. 122.*

And usually they return men of the poorest and meanest sort, least able to discern the causes in question, and most unable to bear the charges of attendance, sparing, and letting the rich men, and most able and sufficient Freeholders to abide at home; and all this they do to get money and bribes.

And whereas in any *Issue* joined for the trial of any matter above 40 s. the Jurors ought to have land, &c. to the yearly value of 40 s. whereof four must have lands, &c. to that value in that County; The Sheriff notwithstanding (if they favour not the Plaintiff) will return such Jurors as shall not have 40 s. in the Shire; or else such as shall not have 40 s. in the Hundred; or such as are Cousins to the Def. or Plaintiff; or within the Distress of the Def. and Plt. And these are great mischiefs; for the party cannot have process against other Jurors; Nor he cannot challenge any for the causes aforesaid, until the Jury do appear.

They often return upon Juries, persons suspect, and of evil fame; and sometimes persons nominated to them; taking gifts and rewards for such purpose.

They have returned upon Juries their Officers, and Servants.

Auter Abuses de Sheriffs in lour Retorns.

**N**ota que in divers briefs the Sheriff will set forward whose suite he pleaseth: And put back and delay such as ought lawfully to proceed. Come in a writ of *Summons*, *les paroles sont*, Si. T. B. fecerit te securum de clamore, &c. *Summon. per bonos Summonitores, &c.*

Here

Hereupon if the Sheriff favour not the Demand. he will return,

1. Q<sup>le</sup> demandant n<sup>ad</sup> trouve Pledges de pursue le Suite : Et pur ceo le brief est perde, Ou il ne retone.
2. Forsque un Pledge ; Et ce est Error si le demandant proceed.
3. Q<sup>le</sup> demandant, ne nul pur luy ad monstre a luy le terr<sup>e</sup> in demand, que est suppose estre in B. Et que la est nul tiel ville ne hamlet.
4. Q<sup>le</sup> tenant est mort. *Q<sup>d</sup> Istud breve mihi venit adeo tarde, &c.*
5. Q<sup>auter</sup> home est tenant del terr<sup>e</sup>, &c.
6. Mandavi Ballivo libertatis, qui nullum dedit responsum, &c. *Q<sup>d</sup> Tarde, &c.*
7. — Et nota, que per ceux faux Retornes, le demandant ad petit remedy, come le Vic. poet estre amercee pur ceux. Hic cap. 20, 37.

And as the Sheriff may make these Returns, and such like, upon the first Writ (sc. sur le Original) so may he do upon any other Writ of what nature of action soever it be.

2. Lou sur le Original brief le Vic. retorn le Def. summon per common Summons, lou in verity il ne fuit unq<sup>s</sup> summon, Si le tenant fait default al jour del retorne il perder ses ters sans aucun remedy : car il ne poet aver action de Disceit vers les Summoners, Car nul tiel in rerum natura ; sans que nul trial poet estre in le action.

3. Lou per le Ley, in personal actions, chescun home que ad ters in le County lou l'action est port, al value de 40 s. doet estre retorn sufficient, Et la sur proces de Distress d'estre agard sur son default, Si n<sup>ad</sup> ters le Vic. est de retorn luy Nul. Uncore si le Vic. ne favor le Plt. il voet retorn le Def. suffic. (lou ad nul terr<sup>e</sup>) Et donque le Plt. poet aver nul Proce<sup>s</sup> de Utlary vers le Def. Et sic le Plt. est sans remedy ; Et que il que n<sup>ad</sup> ters ne care pur le lo<sup>s</sup> de Issues. Ac e contra le Vic. poet retorne le Def. nil lou il ad ters suffic. sil intend de vexer le Def. vel pur arrest de son Corps, ou damage de Utlary ; Et le party ad nul remedy, mes un action sur le case vers le Viscount.

4. Sur le Capias, si le Vic. retorn Non est inventus, coment que le Def. soit dayly en son company, le Plt. ad forsque petit remedy. Uncore 5 E. 4. & 7 E. 4. 31. Le Plt. poet aver action sur le Case, pur nient arrester luy, lou il puisset.

Si le Vic. arrest le Def. Et retorn Non est inventus, Action gift. 13 H. 6. 3

5. Si apres arrest fait, le Vic. retorn Rescous fait per certain persons, le Def. (sur tiel Retorn) fera fine : ou estre Utlage, & cest tantum pur cest faux retorn.

Their Bailiffs oftentimes do warn men to appear upon Juries, without any Warrant from the Sheriff : And this they usually do to such as will not send to, or meet at their Feasts, or otherwise bide them.

Sometimes also they summon or warn Men to appear upon Juries, and yet do not return their Names.

They are slack in arraying their Pannels ; or delibering Copies thereof.

They extort and take undue Fees. See the Stat. 23 H. 6. 8. 9. & 11. Extortion.

11 H. 7. c. 7. They levy more than is contained in their Extreats. 11 H. 7. c. 15.

They levy Issues double, sc. the same Issues of divers persons, being of one Name, &c. 27 Eliz. 7.

They levy the same issues, fines and amercements, of the same men two or three times. 7 H. 4. cap. 3.

They receive the King's debts, but discharge not the debtor.

Under-Sheriffs, (and other Sheriffs Officers) usually practise as Attorneys.

They also continue in their places many years together: both which are contrary to the Laws; And besides by reason thereof the King's subjects dare not pursue them, nor complain of their extortions and oppressions.

They Arrest men sometimes without any Warrant or Process.

*Arrest.*

Sometimes they make Warrants, &c. without any Original.

They wilfully omit to arrest one when they may.

After arrest, (for bribes) they shew favour; And wilfully suffer the party to escape,

Upon a Capias utlagatum, if they take the Defendant, they often take money of him, and so let him go again, when they have also formerly taken money of the Plaintiff to take the Defendant.

They like they will do, when they have taken one upon a Capias ad satisfac' or other Execution, &c.

And so both the King, and the subjects are thereby much wronged.

They are slack in Returning of Utlawries, concealing the same.

The Bailiffs do often gather up divers duties upon the Under-Sheriffs Warrants directed to them; and do purse up the same; so as the same duties are many times demanded again of the parties, in another Sheriffs time: And therefore it shall be safest for the parties, not to pay such duties to the Bailiffs, but to the Under-Sheriff himself, and to get his acquittance upon the payment thereof.

Lastly, the King is many times much deceived and wronged between these Under-Sheriffs, and the Bailiffs, of all his waifs, strays, felons goods, outlaws goods, amercements, fines, and other profits due to the King, which many times are by them either taken up and employed to their own use, And secretly compounded for, but never accounted for.

But for the manifold wrongs, rights, extortions, oppressions, and other abuses practised, especially by some Under-Sheriffs and Bailiffs, I must confess my reading little, and my experience less able to discover them: And if any well experienced Under-Sheriff (out of his love to the common good of the Country) would put his helping hand, not only to the further discovery of the foul abuses practised in his kind, but also to the further perfecting of this whole Book, it would be gratum opus.

Deus

Minimus

Magnus

*Vicecomitis Officio Supplementum.*

---

A N  
A P P E N D I X  
O R  
S U P P L E M E N T  
By way of Addition to, and Amplification of the Learned  
T R E A T I S E  
O F  
MICHAEL DALTON Esq;  
Touching the  
O F F I C E and A U T H O R I T Y  
O F  
S H E R I F F S.

CONTAINING

A Collection of the Statutes relating to Sheriffs made since Mr. *Dalton's* Writing, which are in Force and Use at this day ; several special Returns of Writs, and the Expositions, Judgments and Resolutions of the Reverend and Learned Judges in the several Courts at *Westminster*, upon divers Statutes, Cases, Questions in Law, concerning Sheriffs and their Officers, and several other new Matters.

With a New and Copious TABLE to the whole Book ; wherein the Defects and Imperfections of the Old Table are supply'd and amended.

---

L O N D O N.

Printed by the Assigns of *Richard* and *Edward Atkins* Esquires. 1700.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

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T O T H E  
R E A D E R.

R E A D E R.

**S**INCE the time wherein the Learned and Judicious *Michael Dalton* Esq; Collected that laborious Treatise, Intituled *Officium Vicecomitum*, several Acts of Parliament have been made (whereby Sheriffs are either enjoined the performance of new *Matters*, or eased in something wherein before they were burthened,) and divers Expositions, Resolutions, and Judgments, have been given in the several Courts of *King's Bench Common Bench*, and *Exchequer*, by the grave and Learned Judges of the same Courts, upon divers Statutes, Cases, and Questions in Law, concerning the Office and Duty of Sheriffs and their Officers. I have endeavoured to Collect them together out of the many Volumes of the Law, and put them under proper Titles, for the ease, benefit, and profit of the Gentry of this Land (on whom the burthen of this Office lieth;) but especially of the immediate High-Sheriffs, and Under-Sheriffs; who by their diligent perusal, and careful observation of the whole *Matter* of this and the former Treatise, may be directed to run though their several Offices without hazard to themselves, or oppression of the People.

The

### *To the Reader.*

The new Matters are added by way of Supplements: And to the end the Matters in the whole Book may be easily and speedily found out (many of the useful Matters in the foregoing part being either difficult to find, or wholly omitted out of the old Table, (I have compiled a new Table thereunto, and have added therein the Matters comprised in this Supplement, putting both together under one and the same respective proper Titles. And for distinction, whereby the Matters in this Supplement may be known from the rest, I have put this Mark (★) to it throughout the Table. Such as it is I commend to thy Reading and Practice, and leave to thy favourable Construction, presuming that as well this, as what Mr. Dalton hath before Written, may tend to thy use and benefit, and the publick good; which is all I desire.

*Farewell*

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C A P.

# C A P. I.

## Account.

### S E C T. I.

Statutes made since Mr. Dalton's time touching Sheriffs, which are in force and use at this day.

22 Car. 2.

**B**y the Statute against Conventicles, 22 Car. 2. It is amongst other things Enacted, That the Monies levied upon Offenders against that Statute, shall be paid into the hands of the Justice or Justices of the Peace, who gave the Warrant or Warrants for levying the same, to be by him or them distributed, one third part to the use of the King's Majesty, his Heirs and Successors, to be paid to the High-Sheriff for the time being, in manner following, (viz.) The Justices of Peace shall pay the same into the Court of Quarter-Sessions, which Court shall deliver the same to the Sheriff and record the delivery thereof; which Record shall finally discharge the said Justices and charge the said Sheriff, which charge and discharge shall be certified into the Exchequer together and not apart.

*The King's Monies levied upon this Act shall be paid to the Justices of Peace, and by them to the Quarter-Sessions, and from thence to the High-Sheriff.*

### S E C T. 2.

Sheriffs eased in their Accompts, and in their Tables and Servants in time of Assizes.

14 Car. 2. 21.

**B**y the Statute of 14 Car. 2. cap. 21. It is ordained that no Sheriff of any County or Shire within this Realm, shall in the time of Assizes, held for the said County or Shire during his Sheriffalty keep or maintain, or cause to be kept or maintained, any Table or Tables for receipt or entertainment of any person or persons resorting to the said Assizes, other than those that shall be of his own Family

*Sheriffs to keep no Tables in the time of Assizes.*

Et

mily

*Sheriff not to have above 40 nor under 20 Men-servants at the Assizes, except Sheriffs in Wales, and there not under 12 Men-servants. Penalty 200 l.*

mily or Retinue; nor shall make or send in any Present to any Judge or Judges of Assize for his or their Provision; nor give any gratuity to his or their Officers or Servants, or any of them; And that no such Sheriff shall have more than forty Men-servants with Liberties attending upon him in the time of the said Assizes, nor under the number of twenty Men-servants in any County whatsoever within the Kingdom of England, nor under the number of twelve Men-servants in any County within the Dominion of Wales, upon pain that every Sheriff offending in any of the Premises shall forfeit for every default two hundred pounds.

*Proviso touching London, Middlesex, Westmerland, and Sheriffs of any City and County, or Town and County.*

But by Proviso in the same Statute, nothing therein above mentioned shall extend or any way concern the Sheriffs of London and Middlesex, the Sheriff of Westmerland, or any Sheriff of any City and County, or Town and County, within this Realm, but that they shall or may do, as heretofore hath been there used and accustomed.

*Sheriffs eased in passing their Accompts in the Exchequer. Seizure of Lands remaining charged Michaelmas 1660. Remembrancer shall make Copies of Seizures and Inquisitions. Writ or Commission shall be recited only in brief. Seizures taken or returned shall be delivered to the Ingrosser before the next Term.*

And for the future ease of Sheriffs in the passing their Accompts in the Exchequer, It is by the same Statute enacted and declared, That every Seizure for or concerning any Lands, Tenements and Hereditaments then remaining charged in the foreign Account of any Sheriff in England, for the year 1660. shall be from the said foreign Account charged particularly in the great Roll of the Exchequer; and that the respective Remembrancers of the said Court do forthwith, and so from time to time for the future, make perfect Copies of every such other seizure and inquisition as then were or thereafter should be certified into their respective Offices, without certifying the Copy of the Writ or Commission at large, upon which such seizure and inquisition is or shall be taken or returned, mentioning only in brief, the date of the said Writ or Commission, and shall deliver the said Copies truly examined and attested under their hands to the Ingrosser of the said great Roll, and that all such Seizures as shall be returned or certified into any their respective Offices shall be delivered, so examined and attested to the Ingrosser before the first day of the next Term, after the Remembrancer's receiving of the same, so as the same may be charged in the great Roll; to the end that Process of the Court may thence issue for levying the Issues and Profits, for the use of the Crown; The Remembrancer shall be paid for every Sheet, writ and delivered 8 d. to be paid by the Sheriff, who shall be allowed the same upon his Account out of the Profits arising by such Seizures; and no Sheriff in England shall be charged in Account to answer any illeivable Seizure, Farm, Rent or Debt, or other Seizure, Farm, Rent, Debt, Matter or Thing which was not writ in Process to be levied: wherein the persons of whom, or the Lands or Tenements, out of which, together with the cause for which the same shall be so levied, shall be plainly and particularly expressed; But shall be thereof wholly discharged without Petition, Plea or other trouble or charge whatsoever.

*Fees to the Remembrancers.*

*Sheriffs shall not answer illeivable Seizures, Farms, Rents, &c. nor others, which are not in Process and plainly expressed.*

*Seizure before the first of King James, and divers others to be left out of the Sheriffs Accompts.*

And that all Seizures made before the first year of the late King James, remaining in the Accompts of the Sheriffs, and all Seizures and Debts which are pardoned, are fully discharged, and shall be left out of the Sheriffs Account without further Order, Plea, Petition or other Charge, and that no Process shall issue for levying the same, or for any other Rent or Farm, which cannot be explained by setting forth the particulars thereof, or which have been unanswered

answered forty years : And that all other dead Farms and Seizures, and all desperate, illeivable and untilligible Debts shall be removed out of the Annual Roll, and Sheriffs charge into the Exchequer Roll, there to remain till by Commission, they shall be revived and made answerable.

And to the end that all new Debts arising and coming into the Exchequer for the future may be sent forth in Process in convenient time, It is thereby farther enacted and declared that the said several Remembrancers do forthwith enrol and certify to the said Ingrosser of the great Roll, all such Debts as any Sheriff or Sheriffs of this Realm are or hereafter shall be charged withal, either by virtue of their respective Returns made to the Barons of the said Exchequer upon his Majesty's Writs of Fieri Facias, Levam Facias, Capias, or other Process : And also of all Fines and Amerciaments, which are and shall be set and imposed by the Court of Exchequer upon any Sheriff or Sheriffs for his or their Contempts or Neglects (that is to say) that all and every such Debts, Fines and Amerciaments, as then were returned, set or imposed in any of the said Offices should be delivered, as aforesaid, before the first day of February then next, and all afterwards by the first day of the next Term after such Returns made, or such Fines or Amerciaments set or imposed, that so they may be charged in the respective Sheriffs Accompts, and comprehended within their respective Quietus est, upon pain that every Officer or Officers in the said Exchequer, who shall in any thing offend contrary to the said Statute, shall forfeit 40 l. for every such Offence, one moiety to the King, &c. and the other moiety to the party aggrieved, to be recovered by Action of Debt, Bill, Plaint or Information, in any of his Majesty's Courts at Westminster, wherein no Essoign, Protection, Privilege, or wager of Law shall be allowed.

*Process for debts to be sent forth in convenient time.*

*Penalty upon Officers for doing any thing against this Act.*

9 E. 2. St. Lincoln.

4 E. 3. cap. 9.

5 E. 3. cap. 4.

And it is thereby further ordained that no person shall be assigned Sheriff of any County within this Realm, but such as have Lands within the same County sufficient to answer the King and his People.

*Sheriff shall have sufficient Lands within the County.*

21 Jac. cap. 5.

And whereas by an Act made in the 21st of King James, It was provided, That whensoever any Sheriff upon passing his Accompt should have his Quietus est, that he should be thereby absolutely discharged of all Sums of Money by him levied and received, and pretended not to be accompted for within the said Accompt, whereupon he had his Quietus est, unless such Sheriff should be called in question for such Sums of Money so pretended to be levied and not accompted for within four years after the time of such Accompt and Quietus est, notwithstanding which Act, divers Sheriffs and their Heirs upon such pretence have been molested and troubled many years after their Accompts and Quietus est, and have had Process sent out against them contrary to the said Statute, It is therefore thereby further Enacted, That when any Sheriff or Sheriffs within England or Wales upon passing their Accompts, shall have their Quietus est, that then such Sheriff and Sheriffs, their Heirs, Executors and Administrators, Lands, Tenements, Goods and Chattels shall be thereby absolutely discharged of all manner of Sums of Money by them levied and received notwithstanding any such pretence, that the same were not accompted for, or other pretence whatsoever, unless such Sheriff be called in question, and Judgment given against him or them for the same within four years after such Accompt or Quietus est ; And every Officer

*A Quietus est, to be a sufficient discharge for a Sheriff, if not questioned within four years after grant thereof.*

*Penalty as in  
the foresaid  
Act.*

or Minister by whom or by whose default any Process shall be sent out contrary to the Statute, shall incur the like Forfeitures and Penalties to be recovered, by such person and in such manner, as by the said former Statute is provided. 21 Jac. cap. 5.

*Chester, Lancaster,  
Durham,  
Wales.*

The Sheriffs of Chester, Lancaster, Durham, and the Counties in Wales being County Palatines, shall notwithstanding this Act, as to the manner of their Accompting, Accompt, as formerly before the respective Auditors only, and not elsewhere.

*Proviso touching  
the King's  
Remembrancer  
and Lord Treasurers  
Remembrancer.*

By Proviso in the said Act it is declared, That nothing in the said Act contained shall extend to enjoin his Majesty's Remembrancer, or the Lord Treasurer's Remembrancer, to transcribe and deliver to the Ingrosser of the great Roll any Inquisitions or Seisures, but such as have been formerly charged in the Foreign Accompts of the Sheriffs, but for all Inquisitions upon Attainders or other Forfeitures to the Crown, the same shall be put in charge as heretofore, according to the constant usage and decree of the Court of Exchequer. Nor shall the said Act extend to exclude his Majesty's said Remembrancer of or from the writing forth Process for or upon any his Majesty's Debts, Duties, Outlawries, or other charge whatsoever, or Process of Levam Facias, at the prosecution of any person or persons to levy the Issues or profits of any Lands or Tenements seized or to be seized into the King's hands, or Process of venditioni exponas for Goods seized or to be seized upon any Debt to his Majesty, his Heirs or Successors, or upon any Outlawry; Or to alter or charge the pleadings or other proceedings heretofore used in the said Office, upon any Pleadings touching the said Debts, Duties and Seisures, or any of them. And that no Debt, Duty, Fine, Amercement or Seisure whatsoever, which shall be charged in the said great Roll of the Pipe upon any person by any Record, Process or Proceeding had, made, filed or recorded in his Majesty's said Remembrancer's Office, nor any Process or Proceeding thereupon to be had, or made by virtue of the said Act, shall be respited, staid, mitigated, extenuated, compounded, or otherwise discharged, but by Order, Warrant or Judgment made, filed or entered in his Majesty's said Remembrancer's Office, where the Original of such Debt, Duty or Charge remaineth; And that in case any Process of Summons of the Pipe shall be awarded, for or upon any such Debt, Duty, Fine, Amercement or Seisure whatsoever, and the same shall not upon such Summons be levied or answered unto his Majesty, That then the Clerk of the Pipe, or Ingrosser of the great Roll, shall the next Term after the Return of such Summons certify the same in a Schedule into his Majesty's said Remembrancer's Office, that further Process may thence be issued for levying thereof. Nor shall the said Act extend or be construed prejudicial to his Majesty's Remembrancer in any just, ancient, and lawful Fees belonging to his Office, and usually had by him or his Predecessors.

*Continuance.*

This Act to continue to the end of the first Session of the next Parliament, and no longer.

## S E C T. 3.

## Of Arrests.

13 Car. 2.

**B**y the Statute of 13 Car. 2. touching Arrests, it is enacted, That *Persons arrested by Process out of the King's Bench or Common-Pleas, not expressing the cause of Action, to be bailed.* after the 12th of February, 1661. no person arrested by any Sheriff, Under-Sheriff, Coroner, Steward or Bailiff of any Franchise or Liberty, or by any other person having or pretending to have any Authority or Warrant, by force or colour of any Writ, Will or Process out of the King's Bench or Common-Pleas, wherein the certain or true cause of Action is not expressed particularly, and for which the Defendant is bailable by the Statute of 23 H. 6. shall be forced to give Bond with Sureties for his appearance at the Return of the Writ, Will or Process, exceeding the Sum of 40 l. to be conditioned for such appearance: And all Sheriffs and other Officers shall let to bail, and deliver out of Prison and from their custody all persons by them arrested upon any such Writ, Will or Process, wherein the true cause of Action is not particularly expressed, upon Security in the Sum of 40 l. and no more, given for the appearance of such person so arrested to the Sheriff or other Officer, according to the said Statute of 23 H. 6. *Upon Security in 40 l.*

23 H. 6.

23 H. 6.

And that upon appearance to be entered in the Term wherein such Writ, Will or Process is returnable, for the Defendant by Attorney in the Court whence the said Writ, Will or Process issued, unto such Writ, Will or Process, the Bond aforesaid is declared to be satisfied and discharged: And after such Appearance no Amerciaments be extorted upon or against any Sheriff or other person, concerning the want of such Appearance. *An appearance shall discharge that Bond.*

This Act not to extend unto any Arrests to be made by virtue of any Capias Utlagatum, Attachment upon Rescous or Attachment upon any contempt issuing out of either of the said Courts, though no particular certainty of the cause of Action be expressed in the said Writs; And that no Sheriff, Under-Sheriff or other Officer, shall discharge any person taken upon any Writ of Capias Utlagatum, without a lawful Superfedeas first had; And that upon the said Writs of Attachment such lawful course be taken for security for appearance therein, as hath been heretofore used. *Arrests upon Cap. Utlagatum, Attachment upon Rescous or Contempts excepted.*

Nor shall it extend to any Writ of Capias ad satisfaciendum, wherein a Writ of Exigent after a Judgment is to be awarded; Nor to a Capias ad satisfaciendum against the Defendant in order to make any bailable, but that the same continue and be, as before the making of the said Statute. *Arrests upon Cap. ad satisfac. to the Exigent, or against a Defendant excepted.*

## S E C T. 4.

## Habeas Corpus.

*Every person  
committed con-  
trary to this  
Statute shall  
have a Habeas  
Corpus.*

*Directed gene-  
rally.*

*Sheriff shall  
take the parties  
own Bond for  
the charges, and  
the Court shall  
order those  
charges if, &c.*

**B**y the Statute of 17 Car. 1. cap. 10. intituled, An Act for regul<sup>17 Car. 2.</sup> lating the Privy Council, and taking away the Star-Chamber: It is amongst other things enacted, That every person that shall be committed, restrained of his liberty, or suffer imprisonment by the order or decree of the Star-chamber, or of any other such Court, or by command or warrant from his Majesty, his Heirs or Successors, or by command of the Council Board, or of any the Lords or others of his Majesty's Council, upon demand or motion by Counsel or others to the Judges of the King's Bench or Common-Pleas in open Court, have forthwith for the ordinary Fees a Writ of Habeas Corpus, to be directed generally to all and every Sheriff, Gaoler, Prisoner, Officer, or other person in whose custody the party restrained shall be: who upon the Return of the said Writ, and according to the command thereof, upon due and convenient notice thereof given him at the charge of the party who requireth or procureth such Writ, and upon Security by his own Bond, given to pay the charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought, (the charges of bringing and carrying back the Prisoner to be always ordered by the Court, if any difference shall arise thereabouts) bring or cause to be brought the body of the party so committed or restrained, before the Judges or Justices of the said Court from whence the Writ issued, and then certify the true cause of such his Detainer or Imprisonment.

## S E C T. 5.

## Jurors.

*No Petty-Jury in  
actions or Suits  
concerning Cu-  
stoms.*

*The Sheriffs of  
London upon  
Warrant from  
the Commissio-  
ners for High-  
ways & Streets  
requiring them  
to impanel and  
return Jurors,  
shall do so.*

**B**y the Statute of 14 Car. 2. concerning Tonage and Poundage, <sup>14 Car. 2. 11.</sup> it is enacted, That upon any Action, Suit or Information, upon any Law or Statute concerning Tonage and Poundage, or Ships or Goods to be forfeited by reason of any unlawful Importation or Exportation, there shall not be any Petty-Jury, but such only as are the King's natural born Subjects.

**B**y the Statute of 13 Car. 2. for repairing the Highways, and <sup>13 Car. 2.</sup> Sewers, and keeping clean the Streets in and about London and Westminster, the Sheriffs of London for the time being, upon Warrant from the said Commissioners requiring them to impanel and return a Jury before them, or any five of them, are required to do the same accordingly.

19 Car. 2.  
22 Car. 2.

By the Statute of 19 Car. 2. for rebuilding the City of London, the Sheriffs of London for the time being, upon Warrant from the Lord Mayor and Court of Aldermen, requiring them to impanel and return before them a Jury of good and lawful Men of the said City, are required to do the same accordingly.

*The Sheriffs of London, upon Warrant from the Lord Mayor and Court of Aldermen, requiring them to impanel and return Juries, shall so do.*

22 Car. 2.

The like is required by an Act of 22 Car. 2. Intituled an Additi-  
onal Act for rebuilding the City of London.

19 Car. 2.

By the Statute of 19 Car. 2. constituting Commissioners for taking Accompts, It is enaged, That the Commissioners or any five or more of them, by Warrant under their Hands and Seals to any Sheriff, Bailiff or other Officer, within any County, City, Port, Corporation or Liberty within this Realm, requiring them to return and cause to appear before them, or some of them, or such others as they shall appoint, good and lawful Men, inhabiting within their respective Counties, Cities, Ports, Corporations and Liberties at such time and place as shall be thereby required, under such penalty as therein shall be contained, shall return them and cause them to appear accordingly. This to continue three years from the end of that Session of Parliament.

*The like Jurors to be returned before Commissioners for taking Accompts.*

## SECT. 6.

### Poor Prisoners.

19 Car. 2.

By the Statute of 19 Car. 2. 4. touching poor Prisoners, It is amongst other things Enacted, That any Sheriff or other respective Officer having the Custody of the Gaol, with the consent of three or more Justices of the Peace, whereof one of the Quorum, may upon emergent occasions in their respective Counties, provide other safe places for the removal of the Sick out of the ordinary and usual Gaol, the same places to be used for the Custody of the Prisoners, who according to their Order shall be there kept, orderly disposed and conveyed to the Gaol-delivery in such like manner as Prisoners ought to be kept, ordered, disposed and conveyed in and from the common Gaols by the Laws and Statutes of the Land (provided no such place be made use of, for the purposes aforesaid against the good and free Will of the Owners thereof.)

*If Sickneses and Diseases happen among Prisoners, provision is made for their removal.*

The like power for the removal of Prisoners in time of Infection, is given to the Mayor, Bailiff and other head Officer, or other persons, who have Custody of the common Gaol, within any Corporation of this Kingdom and Dominion of Wales.

*Removing of Prisoners in Corporations.*

## S E C T. 7.

## Pardon.

*Penalty of any Officer, &c. that shall go about to disquiet or trouble any person pardoned by this Act.*

**B**y the Statute of free and general Pardon made in the twelfth<sup>12 Car. 2.</sup> year of his now Majesty's Reign, it is amongst other things enacted, That if any Sheriff or Escheator, or any of their Deputy or Deputies, or any Bailiff or other Officer whatsoever, by colour of his Office or otherwise, do levy, receive, take or withhold of or from any person, any thing thereby pardoned or discharged, and be thereof convicted or condemned by sufficient proof, shall pay for recompence thereof to the party grieved treble damages, besides all Costs of the Suit; And shall forfeit to the King ten pounds.

*Fines, Issues and Amerciaments received by Sheriff excepted.*

Except all Issues, Fines and Amerciaments, Rents, and other publick Duties, being levied, received or collected by any Sheriff, Under-Sheriff, Bailiff, Minister or other Officer, to or for the use of the late King, the Parliament, or the Keepers of the Liberty of England, or any other person styling himself Protector, or for his Majesty that now is, and accounted for and discharged.

## S E C T. 8.

## Replevin.

*Plaintiff in Replevin being nonsuit before Issue joyned in any the Courts at Westminster, how the Defendant may avow.*

*The Sheriff shall enquire of the value of the Distress.*

**B**y the Statute of 17 Car. 2. touching Replevins, It is Enacted, That whensoever any Plaintiff in Replevin shall be nonsuit, before Issue joyned in any Suit of Replevin by Plaint or Writ lawfully returned, removed or depending in any the Courts at Westminster, That the Defendant making a Suggestion in the nature of an Avowry or Cognisance of such Rent, to ascertain the Court of the cause of Distress, the Court upon his prayer shall award a Writ to the Sheriff of the County where the Distress was taken, to enquire by the Oath of twelve good and lawful Men of his Bailiwick, touching the Sum in arrear at the time of such Distress taken, and the value of the Goods or Cattel distrained; And thereupon notice of fifteen days shall be given to the Plaintiff or his Attorney in Court, of the sitting of such Enquiry; And the Sheriff shall enquire of the truth of the Matters contained in that Writ, by the Oaths of twelve good and lawful Men of his County; And upon the Return of such Inquisition, the Defendant shall have Judgment to recover against the Plaintiff the Arrearages of such Rent, in case the Goods and Cattel distrained amount unto that value: and in case they shall not amount to that value, then so much as the said Goods and Cattel so distrained shall in value amount unto, together with his full Costs of Suit: And shall have Execution

<sup>17 Car. 2. 7.</sup>  
<sup>19 Car. 2. 5.</sup>

Execution thereupon by Fieri Facias, or Elegit, or otherwise, as the Law shall require. And in case such Plaintiff shall be nonsuit after Cognisance or Avowry made, and Issue joyned, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impannelled or retourned to enquire of such Issue, shall at the Prayer of the Defendant enquire concerning the Sum of the Arrears, and the value of the Goods or Cattle distrained; And thereupon the Avowant, or he that makes Cognisance, shall have Judgment for such Arrearages, or so much thereof as the Goods or Cattle distrained amount unto, together with his full costs; And shall have Execution for the same by Fieri Facias or Elegit, or otherwise, as the Law shall require.

And if Judgment in any the Courts at Westminster be given upon Demurrer for the Avowant, or him that maketh Cognisance, for any Rent, the Court shall at the prayer of the Defendant award a Writ to enquire of the value of such Distress; And upon the Return thereof, Judgment shall be given for the Avowant, or him that makes Cognisance, as aforesaid, for the Arrears alledged to be behind in such Avowry or Cognisance, if the Goods or Cattle so distrained shall amount to that value; And in case they shall not amount to that value, then for so much as the said Goods and Cattle so distrained amount unto, together with his full costs of Suit, and shall have like Execution, as aforesaid.

If the Distress shall not be found to be to the full value of the Arrears, the party, his Executors or Administrators may distrain for the residue.

19 Car. 2. 5.

This Act made to extend to Wales, and Counties Palatine, 19 Car. 2. 5.

## C A P. II.

## Sheriff.

## S E C T. I. Some Observations of the Sheriffs Oath.

110 Car. 2. 5.  
Sir Edward  
Coke's Case.

18 E. 3.

5 R. 2.

2 H. 4. c. 15.

1 E. 6.  
1 Eliz.

**S**IR Edward Coke late Lord Chief Justice of the King's-Bench, and removed from his places, being made Sheriff of the County of Buckingham, had a Dedimus Potestatem to take his Oath, annexed to a Schedule; To which he took Exceptions: For that there were more Additions to the said Oath, than was in the ancient Oath set down in the Register, and afterwards confirmed and appointed by the Statute of 18 Ed. 3. He therefore conceived there ought not to be such Additions, unless by like authority of Parliament. The Additions were; First, That he should seek to suppress all Errors and Heresies, commonly called *Lolardism*, and should be assistant to the Commissaries and Ordinary in Church-matters; which part of the Oath was added by reason of the Statutes of 5 R. 2. and 2 H. 4. cap. 15. whereby it is appointed, that the same should be taken by the Sheriff, especially for those two causes: But he thereto Excepted, For that those Statutes are repealed by the Statutes of primo Edwardi sexti, and primo Eliz. and therefore ought not to be taken. The second Addition was, That he should return reasonable Issue; whereto he excepted, because it is appointed by the Statute, and Penalties imposed for not performing it, therefore it ought not to be upon Oath. The third Addition was, That he should return all Juries of the nearest and sufficientest persons; whereto he excepted, because that part of the Oath is not appointed by any Statute, and it is against common practice that he himself should return Juries, it being

The first Exception.

The new Additions which were objected against.

The second Exception.

The third Exception.

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ing

ing commonly done by the Under-Sheriff, who is also appointed by the Statute to be Sworn. The fourth Addition was, That he should cause the Statute of *Winton*, and the Statute against Rogues and Vagabonds, to be put in execution; whereto he excepted, because the Statute of *Winton* is altered, and the Statutes against Rogues and Vagabonds are appointed to be executed by the Justices of the Peace, and not by the Sheriff. Upon these Exceptions the Lord Keeper assembled all the Justices to confer with them about the same; as touching the first point, they conceived it was fit to be omitted out of the Oath, because it is appointed by Statutes which are repealed, and were intended against the Religion now professed and established, which before was condemned for Heresie, and is now held for the true Religion. For the second Addition, they conceived it convenient, and for the service of the King and Subjects; and the greater part of them were of Opinion, That an Oath in this and the other points, may be well enjoyned by the King, and Order of State, without Parliament; and it may be well imposed upon the Sheriff to take, being for publique benefit, and execution of the Laws. For the third Addition, it is not so strictly to be intended, that he himself should return Juries, but it ought to be intended according to the construction of Law, That he himself, by himself or Under-Sheriff, should return the Juries, which is a sufficient performance; for the Law saith, *Qui per alium facit per seipsum facit*. For the fourth Addition, it rests upon the former reasons, That this Oath being appointed and continued divers years, by the direction of the State, although without the express Authority of any Statute-Law, yet may be well continued for the publique benefit, in representing such persons; And although Authority be given to Justices of Peace, to put those Statutes in execution, yet it doth not take away the Sheriff's Right, who is Publique Conservator. And so they delivered their Opinions to the Lord Keeper at his house at Reading.

The fourth Exception.

Where the Oath ought to be amended.

The answer to the second Exception.

To the third Exception.

To the fourth Exception.

### Enquiry in Dower.

Cannot make a Deputy to enquire in Dower. Enquiry de dampnis. To make Inquisition is a judicial act, which cannot be made by his Bailiff.

**A** Brought Dower against the Son to be endowed of Lands of Hill. 35 Eliz. which her Husband (Father of the Defendant) died seised: A B. R. Randal's Case, Noy 21. Writ issued out to the Sheriff, to enquire of the damages; and he made his Warrant to I. S. to take the Enquest: It was the Opinion of the Justices in this case, that he cannot in this case make a Deputy, because it is a judicial act, which the Sheriff ought to do in person, Hill. 35 Eliz. B. R. Randal's Case. Noy 21.

Where a Writ may be directed to the Sheriff, though he be a Party therein.

Error assigned. That although the Sheriff was party, yet the Writ of Covenant should have been directed to him, and not to the Coroner.

Summons.

**E**rror, to reverse a Fine in Chester: The Error assigned was, because the Writ of Covenant was directed to the Coroners, with this Clause at the end of the Writ: *Quia prædictus Job. Dove Miles, est Vicecomes Comitatus Cestriae, fiat Executio Brevis prædict. per Coronator.* Ita quod Vicecomes non se intromittat; whereas the Writ ought to have been directed to the Sheriff, &c. And this was divers times argued, and much insisted upon by those who argued at the Bar for the Plaintiff in the Writ of Error: And first they said that if the Sheriff had been the sole party to the Fine, yet the Writ ought to have been directed unto him, because it is but a Summons, and the Sheriff may summon himself: Also it is not returned, that he is Sheriff and cannot summon himself; And the course of Law is, that the Writ

Dove versus Smithier, Cro. Car. 415, 416.

18 H. 8. 3.  
9 H. 6. 12.

Writ shall be directed to the Sheriff, and not to any other, when it may be done without prejudice: And that the Writ is abated when it is directed to the Coroners, &c. vide 18 H. 8. 3. 9 H. 6. 12. The second reason, because that the Sheriff is not the sole party, but others are joyned with him, &c. But all the Court resolved, that it was not Error, for if the Writ be directed to the Sheriff, and he is party, it is doubted in the Books, if the Sheriff as Plaintiff may execute a Writ for himself; And therefore it were good to avoid the doubt, to take a Writ directed to the Coroners, as well where the Sheriff is Plaintiff as Defendant, upon surmise thereof in Chancery at the time of suing the Writ: And it is the general course to award the Writ to the Coroners, to avoid the doubt of delay; for if he be Plaintiff, and makes not such surmise, the Defendant will take Exceptions in abatement of the Writ; and so if he be Defendant he may peradventure plead in abatement of the Writ, and cause him to have a new Writ: But when it is awarded to the Coroners, if the Defendant would have excepted against it, as peradventure he might in some cases, yet when he appears and accepts thereof, and comes and levies a Fine thereupon, he never afterwards shall assign for Error, that the Writ ought not to have been directed to the Coroners, especially upon this amicable Writ, to make assurance, &c. Wherefore all the Court agreed, that he never should assign it for Error, &c. and the Fine was affirmed.

To whom Writs are to be directed.

To other parties besides the Sheriff.

The Sheriff may execute a Writ for himself.

Advice by the Court to avoid pleading in abatement.

Esople.

7 Eliz. Pend-  
lowsf. 39, 40.

A Præcipe quod reddat was awarded, Vicecommitibus Glouc. against A. B. and C. the Sheriffs returned, that the said C. named in the Writ, was one of the Sheriffs of the said City; Ideo ego præfat. C. & D. alter Vicecom. Civitatis prædictæ. meipsum secundum exigentiam istius Brevis summonire non possum: It was adjudged by the whole Court to be a good Return. 7 Eliz. C. B. Benloe 39, 40.

In a Præcipe quod reddat, it is a good Return that one of the Defendants is Sheriff, &c.

## S E C T. II.

Where Covenants between Sheriff and Under-sheriff, shall bind, and where not.

Pasch. 11 Jac.  
Rot. 346. Nor-  
ton against  
Simmes, Hob.  
f. 12, 13, 14.

SIR Daniel Norton Knight, late Sheriff of Hampshire, brought an Action upon an Obligation of one hundred pounds, against Richard Simmes, for performance of Covenants, whereof the effect was; That whereas Sir Daniel Norton had made Bryan Chamberlain his Under-sheriff at his will, the same Chamberlain by Indenture did covenant with the Sheriff to discharge and save him harmless of all Escapes of Prisoners, that should be arrested by him, or any Bailiff or Officers appointed by him; and another Covenant was, That he would not execute any Extent, Liberate, Exigit, or any other Execution, for any Sum above the Sum of twenty pounds, before he had first made known to the said Sheriff, the nature and quality of the said Writ, and if any such Execution were above twenty pounds, then he should not execute it without the special Warrant of the said Sir Daniel Norton, the High-sheriff: And there were also divers other Covenants; and the Defendant pleaded, that Chamberlain the Under-sheriff had performed all the Covenants; whereupon the Plaintiff replied, That one White, Anno 44 Eliz. had recovered in the Common Pleas 203 pounds debt, against one Feilder, and that he had gotten 52 pounds thereof, by an Execution of Fieri Facias, in the said County of Southampton, and died, and that Frances White his Executrix, had sued

Debt upon Bond for performance of Covenants.

In an Indenture between the High-sheriff and his Under-sheriff.

A Covenant that he should not execute Executions above 20 l.

Performance pleaded.

A Breach assigned.

a Scire Facias against the said Fielder, for the residue, sc. 151 pounds, and had Judgment, and took out a Capias ad satisfaciendum, and delivered it to the said Chamberlain, who arrested him by force thereof; and so he was in Execution, in the custody of the said Sheriff, for the said Debt, and afterwards escaped out of the Custody of the said Sheriff. Whereupon the Defendant demurred; and the whole Court upon publick argument, gave Judgment for the Plaintiff; and in this case these Points were resolved:

*The Resolution  
of the Court.*

First, that this case was not within the Statute of 23 H. 6. both because it was not a Bond made by, or in the behalf of a Prisoner, as Beaufages Case is, as also because the Statute is not pleaded, being a special Law; and also because it was not directly pleaded, that Norton was High-Sheriff, or Chamberlain Under-Sheriff, but only by way of recital in the Indenture which was pleaded.

*How the Under-  
sheriffwick  
may be granted.*

It was also resolved, that the Sheriff might grant his Under-Sheriffwick, to hold at his Will only; for it was in his choice, to make or not to make an Under-Sheriff, or to exercise it himself; That

Wyat Weiles  
Case, in Co.  
Rep. accord.

*What an Under-  
sheriff is.  
He cannot be  
irrevocable.*

an Under-Sheriff is in effect but the Sheriffs Deputy, and therefore according to the nature of a Deputation, he must be removeable, as an Attorney is; so that if the Sheriff should make him irrevocable, yet he may revoke him, there is neither Common Law nor Statute Law that makes him immoveable, he is but in the nature of a general Bailiff-errant to the Sheriff, and the whole Shire, as others are over the Hundred; his Oath appointed by the Statute of 27 Eliz. is, That he should bear himself well for so long as he shall continue in the Office: It is necessary both for the publick Service, and for the indemnity of the High-Sheriff, that he be removeable by the High-Sheriff.

27 Eliz.

*He may make  
an arrest.*

Yet it is true, That Under-Sheriffs have been long in use, and experience proves, that many Sheriffs cannot well execute it themselves; so this Point was resolved, that he was a perfect Under-Sheriff, and so the Arrest well made by him, and so an Escape upon it.

*Where the power  
of the Under-  
sheriff cannot be  
abridged.*

Next it was resolved, that a Sheriff in making an Under-Sheriff, did implicitly give him power to execute all the ordinary Offices of the Sheriff himself, that might be transferred by the Law, as serving of Process and Executions, and the like; but he could not deal in a Writ of Redivell, because in that the Sheriff is a Judge, nor in that case of the Writ of Habeas Corpus, where the Sheriff is commanded to go to the place wasted, because it is personal unto the Sheriff himself; hence it follows, that if a Sheriff will make an Under-Sheriff, provided that he shall not serve Executions above twenty pounds, without his special Warrant, this Proviso will be void; For though he may chuse not to make an Under-Sheriff at all, or may make him at his Will, and so remove him wholly, yet he cannot leave him an Under-Sheriff, and abridge his power, no more than the King may in case of the Sheriff himself: But it was said, that the Case there was not so; That the restraint of Executions above twenty pounds, grew not on the part of the Sheriff, but on the part of the Under-Sheriff, by his Covenant, which might stand for good notwithstanding the repugnancy to his Office: But notwithstanding that Objection, the Covenant was holden void, as being against Law and Justice; for since by being made Under-Sheriff, he is liable by Law to execute all Process, without anothers special Warrant, for that is to deny or delay Justice, so this being a Covenant against Law, and being in the negative, needed no answer at all, as being void, and no Covenant in

*Not to serve  
Executions a-  
bove 20 l. is a  
void Proviso.*

*Negative Cove-  
nant against  
Law needeth  
not to be an-  
swered.*

in Law: And though it were not void, yet the general Plea of performance of all Covenants, will serve in the case of a negative Covenant.

But it was resolved, though this Covenant were void in Law, yet the Bond was good for the rest of the Covenants agreeable to Law; And a difference was taken between a Bond made void by Statute and by Common Law: For upon the Statute of 23 H. 6. if a Sheriff will take a Bond for a point against that Law, and also for a due Debt, the whole Bond is void, for the letter of the Statute is so, and the Statute is a strict Law; but the Common Law doth divide according to common reason, and having made that void that is against Law, letteth the rest stand, as the 14 H. 8. f. 15. is.

Hereof it followeth, That if the Covenant for discharge of Escapes (ut supra) were good in Law, and broken, that then the Plaintiff ought to have Judgment; and it was agreed, that if a Man will take a Bond to be saved harmless of suffering one to have escaped, or for enlarging of him out of Prison, against the Law, that these Bonds are void: And so are the Cases of Dive and Manning in Plowd. and the Case of Thower and Whetstone, Mich. 2 & 3 Ph. & Mar. Dyer 118. and so is the Case of 2 H. 4. f. 9. for the Withernam.

But this Case is clean otherwise, and it was resolved by the whole Court to be lawful for the Sheriff to take Bond of his Under-Sheriff, to discharge and save him harmless of Escapes upon Arrests made by himself; for since he transfers his Authority unto him, it is reason to take Security of him, to perform all things justly and faithfully to himself and others; and there is nothing done or intended against Law, for there is no lawful permission of any to escape already done, or to be done; As in the other Case, where the fault is committed by the party that takes the Bond upon confidence of that Security; But here the best performance of the Covenant is, that no Escape be suffered; and the next, that if any be suffered, that then he satisfy the party so, that the Sheriff may be at no loss. It was also resolved, that the Sheriff in this case, was not bound either to give notice to the Under-Sheriff of the Escape, or to make any Request for discharge; for the Covenant hath no such thing, but binds him to discharge at his peril: And Hobart Chief Justice was of Opinion, that if the Covenant had not been against Law, for the Executions above twenty pounds, and that the Bar had been insufficient, because it did not plead specially to that negative Covenant, that yet if the Replication were naught, and assigned no sufficient Breach, the Plaintiff could not have had Judgment; for though the Action were well brought upon the Obligation alone, yet when it appeareth that the Condition was for performance of Covenants, now there can be no cause of Action without some Covenant broken: And observe well Tilly and Woodleyes Case, 7 E. 4. for this purpose, that if it doth appear to that Court, that the Plaintiff hath no cause of Action, he shall never have Judgment, though he had a Verdict for him, against one of the Defendants,

*Where one Covenant is void in Law, the Bond for performance thereof may be good, as to other Covenants. The Sheriff takes a Bond contrary to the Statute, and for a just Debt, it is void for both.*

*A Bond is save the Sheriff harmless from Escapes, is good.*

*Where the Under-Sheriff covenants to save harmless from Escapes, there he must take notice of all Escapes at his peril. If the Bar is insufficient, and the Replication were naught, yet (as this Case was) although the Declaration was good, the Plaintiff shall never recover.*

## S E C T. III.

Where the New Sheriff shall be chargeable, and where the Old Sheriff only; and where their Executors; and how their Prisoners are to be delivered over, and what Returns, by them good, and how to be made.

**T**HE New Sheriff is not chargeable with such things which are executed before that they are delivered over to him by the Old Sheriff.

*For what Prisoners the new Sheriff shall be chargeable.*

*Escape.*

*Execution executed by the old Sheriff.*

*The old Sheriff to deliver his Prisoners to his Successor.*

*Where the new Sheriff is chargeable upon an Arrest by the old Sheriff.*

*Return.*

*If the old Sheriff keep Goods in his hands, what remedy.*

*If the old Sheriff sells Goods after he is discharged from his Office, yet the Sale is good. Writ Authority.*

*Return by the old Sheriff to the new.*

For if the Sheriff takes a Man in Execution, and afterwards a New Sheriff is made, and afterwards and before the ancient Sheriff delivers this Prisoner over by Indenture to the new Sheriff, the Prisoner escapes, here the old Sheriff only is chargeable for this Escape, and not the new Sheriff; for the new Sheriff shall be chargeable for no other Prisoners, than what are delivered over to him by Indenture.

And herewith agreeth Smalman's Case in Leonard; a Capias upon an Original was delivered to the new Sheriff of Warr. against Lane, at the Suit of the Plaintiff, and the Sheriff informed the Court, that before the Capias directed to him, Lane was taken in Execution by the old Sheriff, and that the old Sheriff had imprisoned him in his house, and there he remained; And thereupon he prayed the advice of the Court, what Return to make upon this matter, because Lane was never in his possession, but all the other Prisoners were delivered to him by the old Sheriff; And it was the Opinion of the whole Court, that by the Law the old Sheriff ought to deliver the Body of him who is in his custody, by view to the new Sheriff, and from that time the Law shall adjudge such Prisoner to be in the custody of the new Sheriff, and not before.

But where the old Sheriff arrests a Man, and afterwards returns a languidus in prisona, and afterwards in exitu ab officio delivers him to the new Sheriff charged with the Arrest, and then the new Sheriff suffers him to escape, here the new Sheriff is only chargeable with the Escape; and although the old Sheriff returned a languidus in prisona, yet that is not material to the Plaintiff, he remaining always in Prison, and that Return was only to excuse the bringing of the Prisoner at the day.

The Sheriff seized Goods upon a Fi. Fa. and upon a Venditioni exponas he returned non invenit emptores, then his Office determined, and he still detained the Goods in his hands; And by Doderidge and Jones, (ceteris absentibus) the Plaintiff hath no other remedy against the old Sheriff, but to have Issues returned upon him.

Upon a Fi. Fa. the Sheriff seized Goods to the value of the Debt, and paid part of it, and the Goods not being sold, nor the Writ returned, the Sheriff was discharged of his Office, and afterwards sold the residue of the Goods without any Venditioni exponas; and the Court held that this Sale was good, for the Fieri Facias without any other Writ is a sufficient authority for the Sheriff to sell the Goods; and although when he made the Sale he was discharged of his Office, yet when he took them, he being in his Office, it is good enough.

A Venire Facias was returned thus, Per T. R. Vic. Istud breve cum pannello annexo mihi deliberat. fuit per T. H. Mil. nuper Vic. in exitu ab officio, Et sic indorsat. T. H. Mil. nuper Vic. this was assigned for Error, because it did not appear that it was returned by any one who

Westby verf. Skinner & Catche, Cr. El. 365. 2 Rolls 457. Chandler verf. Thomson, Hob. 266. Egerton verf. Morgan & al. 1 Bulstr. 70 usque 79. Smalman verf. Lane, 2 Leon. 54.

King verf. Sir Euseby Andrews, Cr. Jac. 380.

Dixons case, Latch 117. See afterwards fol.

Ayre verf. A-len Cro. Jac. 73 Rolls tit. Execution 893. accord.

Bethyl verf. Parry, Cro. Car. 189, 190.

who had authority; for in saying nuper Vic. it is as much as to say, that he was not Sheriff at the time of the return made: But per Curiam it is good enough; for it appears by the Record, that T. H. Mil. was Sheriff next before T. R. also if he had returned it, and put only his Name to it, it had been good enough; but then nuper Vic. coming after it, it shall be intended that he returned it when he was Sheriff.

*By the Name of nuper Vic.*

Palmer verf.  
Marth. Tr. 39  
El. B. R. Rolls  
2 part, 457.  
Egerton verf.  
Morgan & al.  
1 Bulstr. 70  
usque 79.  
2 Rol. Abr. 457

If a Writ directed to the Sheriff is executed, and afterwards a new Sheriff is elected, the Successor ought to return the Writ in this manner: Recepti hoc breve predecessori meo direct. sic indorsat. &c.

*The form of a Return upon a Writ directed to the old Sheriff, and executed by the New. So likewise in case of a new Bailiff.*

So if upon a Warrant directed to the Bailiff of a Franchise to execute a Writ; this is served, and afterwards, and before the Return thereof, the Bailiff is removed, and a new Bailiff elected, the Return to the Sheriff shall not be in the Name of the elder Bailiff, but of the new Bailiff in the same manner aforesaid, for the elder Bailiff is now a meer Stranger.

2 Rol. Abr. 458

But if a Writ directed to the Sheriff is not executed by him, and nothing done in the Execution thereof before the old Sheriff is removed, but afterwards the new Sheriff executes it, this shall be returned generally in the name of that Sheriff which executed it, without making any mention of his Predecessor.

*Where the old Sheriff doth not execute it, how to be returned by the new Sheriff.*

Ibid.

19 H. 6. 38.

2 Rol. Abr. 458

The same Law is likewise in the case of a Bailiff of a Liberty. If the old Sheriff upon the Venire return twelve Juroz, upon the Distringas, the Successor cannot return that one Juroz Nil habet, for if he had a Return of the Venire Facias, the same Land is yet chargeable with the Issues, although he hath aliened it, and the Successor shall be bound by that Return of the Predecessor which he made, and if it be false, he may have a Writ of Disceit against him.

*So likewise in case of a Bailiff. Where, upon the Return of a Venire Facias, the old Sheriff concludes his Successor.*

Perkison verf.  
Gilford, Cro.  
Car. 539, 540.

If the Sheriff levies Goods, and dies before satisfying of the Plaintiff, an Action of Debt well lies against his Executors, but where the Sheriff is chargeable in his Life time for a special Tor or Distraunce, there this person is only chargeable, and Actio mortuorum cum persona.

*Where an action of Debt lies against the Sheriff's Executors.*

Empton verf.  
Bathurst,  
Winches Rep.  
51.

If the old Sheriff makes an Extent, and before the Liberate a new Sheriff is chosen, here the new Sheriff shall have the Fees appointed by the Statute, and not the old Sheriff, per Hobart Chief Justice inter Empton & Bathurst. Winch. Rep. 51.

*Where the new Sheriff shall have the Fees, for an Extent made by the old Sheriff.*

Boucher verf.  
Wiseman, Cro.  
El. 440.

A Fieri Facias was delivered to the Under-Sheriff, who executed it the same day that the Writ of Discharge came to the High-Sheriff, but because it could not be proved that the Under-Sheriff had notice of the Writ of Discharge before the Execution executed, it was held by the Court that the Execution was well executed, and that the old Sheriff was chargeable for it.

*Execution executed the same day that the Writ of discharge came, and good.*

#### S E C T. IV.

What Obligations, Judgments, or Promises, taken by Sheriffs of their Prisoners are good, and what not.

23 H. 6. c. 10.

**B**y the Statute of 23 H. 6. c. 10. it is Enacted, That all Sheriffs and all other Officers and Ministers, shall let out of Prison all manner of persons by them or any of them arrested, or being in their custody, by force of any Writ, Bill or Warrant in an Action personal, or by cause of Indictment for Trespas upon reasonable Sureties of sufficient persons, having sufficient within the Counties where such

*Who shall bail Prisoners.*

*What Prisoners to be bailed.*

*Upon what Sureties.*

*When to appear.  
What persons  
not bailable.*

*What Bonds  
may be taken.*

*How to be  
taken.*

*What Bonds to  
be void.*

such persons be so let to Bail or Painspise, to keep their days in such places as the said Writs, Bills or Warrants shall require, (such person or persons which shall be in their Ward by Condemnation, Execution, Cap. Uclagat. or Excommunicatum, surety of the Peace, and all such persons which be or shall be committed to ward by the special Command of any Justices; and Wagabonds, refusing to serve according to the form of the Statute of Labourers only excepted.) And that no Sheriff, nor any of his Officers or Ministers aforesaid, shall take or cause to be taken, or make any Obligation for any cause aforesaid, or by colour of their Office, but only to themselves, of any person, nor by any person which shall be in their Ward, by course of the Law, but by the name of their Office, and upon Condition written, that the said Prisoner shall appear at the day contained in the said Writ, Bill, Warrant, and in such places as the said Writs, Bills, or Warrants shall require. And if any of the said Sheriffs or other Officers or Ministers aforesaid, shall take any Obligation in other form, by colour of their Offices, that it shall be void. See Plowd. Com. 67, 68.

This Statute consisteth of two parts; the one for the benefit of the Sheriff; the other for the Party arrested. Sir Geor. Clifton verf. Web Cro. El. 808.

*Where the Stat.  
is for the benefit  
of Sheriffs.*

That which respects the benefit of the Sheriff is, that he shall take Bonds with Sureties for the indemnifying of himself, which if he be amerced he may sue against the Parties bound, or if he be sued for not having the body at the day, he may plead in Bar.

*And where for  
the benefit of the  
Party.*

That Clause for the benefit of the Party is, that the Sheriff under colour of his Office should not oppress the Party, to make him any other manner of Obligation, than what is prescribed in the before mentioned Statute. Plowd. Com. 67. a.

*The several  
branches of the  
Statute.*

This Statute amongst other things hath three notable Branches. Plowd. Com.

1. A Command and Authority for a Sheriff, &c. to let Prisoners to Bail.
2. What Prisoners are not bailable; both which are made in affirmation of the Common Law.
3. The Purview is only in the third Branch, and that is, to avoid Obligations taken in other forms than what are expressed in the Statute.

*What the Com-  
mon Law was  
before this Stat.*

Before the making of this Statute, the inconvenience was such, that when a Man was in Execution, the Sheriff would take upon him to let him at large, taking a Bond from him to save him harmless, and those Bonds which they took, were generally treble the Sum in which the Parties were condemned, which proved very prejudicial both to the Plaintiff and Defendant; for the Plaintiffs only remedy was to sue the Sheriff for an Escape, and was put to great costs and trouble in his prosecution, and when he recovered, he recovered no more than his debt with ordinary costs, and was kept out of his Money a year or two, by these contrivances and practises which were too frequently used by Sheriffs, before the making of this Statute, and they were sometimes so tried out with the continual trouble and charge which doth inseparably attend an Action in that nature, that they did oftentimes sit down with half their Debts, rather than undergo the trouble of prosecuting. Plowd. Com. 67. b.

*The Inconveni-  
encies.*

And on the other side the Sheriffs were sure to be saved harmless by the Security which they had taken from their Prisoners, and by this means their Bribery had safe conduct; to prevent which grand abuses this

this Statute was made. Upon several branches of which Statute several Expositions and late Judgments in Law have been given by the Learned Judges, in the several Courts at Westminster.

*The occasion of the making of this Statute.*

That the Sheriff, and all other Officers and Ministers, &c.

Johns verf.  
Straford, Cro.  
Car. 309. Stiles  
Rep. 234.

Officers, &c. This word Officer being a general word, it was doubted, whether a Serjeant at Arms was such an Officer as was intended by this Statute to take Bonds, &c. Henden Serjeant was of Opinion that it extended only to Sheriffs and their Bailiffs, and other Officers and Guardians of Prisons, to which construction the whole Court seemed to incline. And as Rolls Chief Justice hath observed Styles Rep. f. 234. that a Serjeant at Arms is out of this Statute.

*The extent and meaning of the word Officer in the Statute.*

*Serjeant at Arms.*

Bracebridge  
verf. Vaughan,  
Cro. El. 66.

In 29 El. inter Bracebridge and Vaughan, it came in question whether the Marshal of the King's Bench was an Officer within this Act or no; and it was there held by Wray Chief Justice that he was included in that Statute, and so are divers persons intended in the purview of the Statute, though not here mentioned: According to which Opinion it was adjudged in Mich. 29 Eliz. inter Widow and Clerk, that the Mayor of a Corporation although not named in the Statute, was included in the purview thereof.

*Marshal of the Marshalsey.*

*Mayor of a Corporation.*

Shall let out of Prison, &c.

Widow verf.  
Clerk, Cro. El.  
76, 77.

At the close of this Statute it is provided, that all Sheriffs, Bailiffs, &c. which do contrary to this Act, shall forfeit treble damages, and 40 l. to be divided betwixt the King and Informer; upon which Clause an Action of Debt was brought for 40 l. in Mich. 29 El. Cro. Eliz. f. 76. the Plaintiff set out in his Declaration that he was sued in the Court at Nottingham before the Mayor and Sheriffs, &c. and was afterwards taken and imprisoned, &c. and that he being so in custody of the Mayor, he offered Sureties to appear, &c. which Sureties the Mayor refused, and still kept him in Prison, and for the matter, (upon a Motion in Arrest of Judgment) the Court was clearly of Opinion that the Plaintiff should have Judgment, but it was afterwards moved, that forasmuch as by the Statute of 18 Eliz. it is provided that no Action shall be brought upon Penal Statutes but by Information or Original, and not otherwise in the negative, and this Action being brought by Bill, for this cause only and no other, Nil cap. per billam was awarded.

*The Penalty that the Sheriff undergoes for not bailing Prisoners.*

*Major.*

*How this Action to be brought.*

*What Securities he must take.*

18 El. cap. 5.

10 R. 101.  
Cotton verf.  
Wale, Cro. El.  
862. Barton  
verf. Aldworth  
Cro. El. 624.

But Nota, The Sheriff is not bound to let a Prisoner to bail, except he tender two sufficient Sureties.

By force of any Writ, Bill or Warrant, &c.

Stepny verf.  
Lloyd, Cro. El.  
646, 647.

Writ, &c. Although the Statute speaks generally of any Writs, &c. yet it is intended of such Writs which required Bail at the Common Law, before the making of this Statute; and therefore where the Sheriff took a Bond of the Defendant (who was arrested by virtue of an Attachment out of the Court of Requests) to appear before the King's Council attending in the Court of Requests at Westminster, &c. it was adjudged by the whole Court that the Process was not any Warrant to the Sheriff to take the Body nor the Obligation; and although it was urged, that in regard he took this Bond colore Officii, although he was never lawfully in his custody, and then the Bond is within the words of the Statute, yet Curia contra, for the Statute intends Bonds which are taken of such persons who are in their custody by due course of Law, but the Bond here taken was by Duress, and so avoidable.

*To what Writs Bail for appearance must be taken. No Attachments out of the Court of Requests. Nor to Attachments out of the Court of Requests. Colore Officii.*

¶

¶

*But to Attach-  
ments out of the  
Chancery.*

But upon an Attachment out of the Chancery the Sheriff took a Bond to appear, &c. and there the Court was of Opinion, that it was within the Statute.

Burton verf.  
Low, Stiles  
Rep. 234.  
Bewfages Cafe  
10 Co. 100.

Upon reasonable Sureties, of Persons having sufficient within the County.

*What Sureties  
must be taken.*

Upon reasonable Sureties: The word Sureties being in the plural number, the question was, whether an Obligation taken by the Sheriff with one Surety were good or no; on the Defendants part it was alledged, that the plural number cannot be satisfied with the singular number, because it is against the very words of the Statute; but it was resolved by the whole Court that the Bond was not void, for the words, upon reasonable Sureties of sufficient persons, are added for the security of the Sheriff, and therefore if he will take but one Surety, it is at his peril, for he shall be amerced if the Defendant doth not appear, and therefore the Statute makes not the Bond void in such case, for the branch which prescribes the form, requires that the Bond shall be made to the Sheriff by the name of his Office, &c. that the Prisoners shall appear, in which Clause no mention is made of the Sureties; so that the intent of the Statute was, that this was at the peril of the Sheriff, to leave it to his own discretion to take one, two or more Securities, as he thought fit.

Bewfages Cafe  
10 Co. 100. b.  
101. Druries  
Cafe there ci-  
ted. Clifton  
verf. Web. Cro.  
El. 808.  
Scryven &  
Dyther, Cro.  
Eliz. 672.

*The form of the  
Bonds.*

Of Persons having sufficient within the County, &c. Although the words of the Statute here are, Having sufficient, &c. yet although the Surety or Sureties have not sufficient within the same County, the Bond is good enough, for the words of the Statute, as to this point, are more for counsel or direction to the Sheriff, than for restraint or precept to him; also this Clause is made for the benefit and advantage of Sheriffs, for if the Defendant cannot procure two sufficient Sureties, having sufficient within the same County, the Sheriff is not bound to let him to bail; and this Exposition agrees with the ancient Rule, Quilibet potest renunciari juri, pro se introducto. And according to this resolution it was afterwards resolved, that a Bond taken by the Sheriff of one which was not an Inhabitant in the County, nor had any Estate there, was good, notwithstanding the words of the Statute, for the reasons aforesaid; and also for that the Statute doth not make void any Bonds, but such only which are made in other form in oppression of the People; so likewise where the Defendant pleaded, that the Plaintiff took the Bond of him and a Stranger, which Stranger had nothing in the County, nor did not there inhabit; Upon a Demurrer to the Plea it was ruled according to the former Resolutions in every particular.

10 Co. 101.  
Bewfages Cafe  
Cotton verf.  
Wale, Cro. El.  
862.  
Barton verf.  
Aldworth, Cr.  
El. 624.

*What persons  
may be Sureties.*

*This Clause ra-  
ther for Direc-  
tion than Precept.*

*What Sureties  
may be taken.*

*What Bonds  
are void by the  
Statute.*

Blackbourn  
verf. Michel-  
born, Cro. El.  
852.  
Sir Geo. Clif-  
ton verf. Web  
Cro. El. 808.

And that no Sheriff, &c. shall take or cause to be taken, any Bond, for any cause aforesaid, or by colour of their Offices, but only to themselves, by the Name of their Office, &c.

*The forms to be  
observed for  
Bonds which  
come within  
this Statute.  
If it be good in  
substance, though  
not in some  
circumstances,  
yet within the  
Statute.*

Any Bond, &c. There are three forms to be observed for Bonds which come within this Statute.

1. It must be made to the Sheriff himself.
2. To him by the Name of his Office.
3. That it shall be only for appearance at the day.

All which circumstances being duly observed, although the Bond be something variant in other circumstances, it is not material, but Bonds made for the Sheriffs profit in oppression of the People, are made void by this Statute. Upon a Cap. in placito debiti for 320 l. the Sheriff took

Cotton verf.  
Wale, Cro. El.  
862.

Villers verf.  
Hastings, Cro.  
Jac. 286.

took a Bond but for 100 l. all which matter being discovered in Pleading by the Defendant, the Plaintiff thereupon demurred, and it was objected, 1. That the Bond was void, because the Condition was only ad respond. in placito debiti generally, which is uncertain, for it may as well be in an Annuity, &c. Also the Sum ought to be shewn in the Condition, that the Defendant may have Consilium what to answer to, but the Court over-ruled them in it, and said it was well enough. A second Exception was because the Bond is for 100 l. being for an Appearance only, whereas it hath been adjudged a 40 l. Bond is sufficient, and therefore the taking of a greater Bond is Extortion, and void within the Statute, for if the Sheriff should have such an unlimited power, he might take a Bond of 1000 l. and so oppress the Subject; but the Court were of a contrary Opinion likewise as to this Objection; for the Statute being general doth not restrain him to any Sum or any Sureties, for he may take one or two or more Sureties according to his discretion, and when it is only for the appearance of the party, he may take what Sum he pleaseth to force the party to appear; and although a Bond of 40 l. is sufficient to excuse him from an Escape, because by the Statute he is forced to let him to Bail, yet non sequitur that he should be restrained from taking a Bond with a greater penalty. Also Bonds taken by Sheriffs, &c. ought to be certain and true Latin, for where the Sheriff took an Obligation for appearance in quadragesimo libris, whereas it should have been quadraginta. for this very reason a Nil cap. per Billam was awarded.

Feilder verf.  
Tovey. Stiles  
Rep. 257, 258.

With what penalty the Sheriff may take a Bond for appearance. They must be true Latin, otherwise void.

By colour of their Offices: If the Sheriff arrest a Man in his own County, and afterwards carries him into another County, and there detains him until he hath given him a Bond for appearance, this Bond is out of the Statute, but the proper and only remedy which the Defendant hath to avoid this Obligation, is to plead per Durels to it. So likewise if a Process comes to the Sheriff, to take the Body, &c. which the Sheriff doth accordingly, and takes an Obligation for appearance, but by Law the Process was not any Warrant to the Sheriff to take the Body, (it issuing out of a Court which had no Authority to grant it) here this Bond was taken by Durels, and so avoidable by the award of the Court, although it was alledged, that the Sheriff took it colore Officii.

Brown verf.  
Druus, Cr. Jac.  
745.

Arrest in one County, and takes a Bond in another County.

Stepny verf.  
Lloyd, Cro. El.  
646.

Durels. A Bond taken upon a Process, issuing out of a Court which had no authority to grant it.

Cro. El. 862.  
Cro. Jac. 286.  
Winchcomb  
verf. Pigot,  
2 Bulstr. 246,  
247, 248. Pigot's Case.  
11 R. 26. b.  
27, 28.

But only to themselves, by the Name of their Office: Herewith agrees expressly Cotton and Wale's Case, Cro. Eliz. 862. and Villers and Halting's Case, Cro. Jac. 286. The Sheriff took a Bond of one in his custody by the name of B. W. Armiger, but omitted Vic Com Oxon. Afterwards a Stranger, without the Sheriffs privacy, interlines these words, (Vic Com Oxon) the Defendant did not appear, whereupon this Bond was sued, and the Defendant pleaded generally, non est factum, and all this matter being found by special Verdict, it was upon long debate adjudged for the Plaintiff, because the Defendant had not made use of those advantages which he might have had; for he should have craved Oyer of the Bond, and if it had appeared to have been the Bond of the Sheriff, taken by him as Sheriff, this would then have made it void; but the pleading Non est Factum, and taking no notice of the Statute, (which he ought to have pleaded, being no general Law) the Court shall suppose that this Bond was taken by him as B. W. only, and not as B. W. Vic, &c. and this Interlineation being made by a Stranger, without the Plaintiffs Privacy, and not being in a place material, shall not hurt the Bond.

By the name of their Office.

When interlineation shall vacate a Bond.

How to avoid it for that cause.

Non est factum. Plea to it.

Stranger.

Plo. Com. 65.

- Upon Condition written, that the Prisoner shall appear at the day contained in the said Writ, &c. as is before observed upon the word Bond: one of the essential parts of this Statute is, that the Bond therein prescribed, must be with Condition to appear at the day contained in the Writ, &c. and that all Bonds taken in other form shall be void; although Sheriffs are not tied up precisely to the Words in the Statute, so that the Conditions be good as to the matter and substance thereof, it sufficeth: And herewith agreeth the Case of Seckford versus VVolverston, Pasch. 26 Eliz. where the Sheriff took a Bond with Condition, that if the Defendant do personally appear in the King's Bench at VVestminster there to answer, &c. that then, &c. And it was moved that this Bond was void: First, because this Word personally was put into the Condition, which was more than the Statute required; but as to this the Justices were all of Opinion, that the Bond was good enough. Secondly, the Condition went further, viz. there to answer; which was likewise more than the Statute required; and as to this point VVray Chief Justice put a difference, where the Words are there to answer, the Bond is well enough; but if the Words had been appear and answer, then the Condition had been void, for it may be the Plaintiff will never declare against him: But Gaudy and Ayloff Justices were of Opinion that the Bond was void; so likewise where the Condition of the Bond was, that if the said R. D. personally appear before the Queens Majesty's Justices at Westminster, a die Pasch. in Quindecim dies, to answer J. H. as shall appertain, and further to do and receive as the Court therein of him shall consider in that behalf, that then, &c. the Defendant pleaded the Statute, and upon a Demurrer it was adjudged, that the Bond was void: So likewise in Mich. 1650. where upon an Action of Debt brought upon a Sheriffs Bond, and upon Oyer of the Condition it was, That the Defendant should appear *tali die in Cancellaria apud VVestm. ubicunque fuerit*; to which the Defendant pleaded the Statute, and the Plaintiff demurred upon him, and several Exceptions were taken by the Counsel; First, because the party was bound to appear in a Court, which was not a first Court, for the Court of Chancery is a moveable Court, and not a first Court, to VVestminster or any other place. Secondly, the Condition is impossible, for it is, that the Defendant shall appear in the Chancery at VVestm. ubicunque fuerit, and so it is impossible for him to appear at VVestminster, and at another place at the same time. Thirdly, the Bond varies from the Statute in some things, and enjoins more than the Statute requires in other things; and by Rolls and Jermyn, here is a material variance in the Bond, which makes it void, for neither the King's Bench nor Chancery are first Courts, and therefore the Defendant ought not to be precisely bound to appear at VVestminster, and then the adding of *ubicunque, &c.* is a fatal fault, and for this reason a Nil capiat was awarded to be entred.
- The Statute saith, that the Condition must be for the Defendants appearance at the day of the Return of the Writ: I have met but with one Case to this purpose, which I will here give you an account of, it being a Case in the point. In an Action of Debt upon a Sheriffs Bond, the Defendant sets forth the Condition, which was, That he should appear die Sabbati, &c. to which he pleads, that the Writ by which he was taken was returnable die Veneris, &c. and then sets forth the Statute; the Plaintiff replies, that the Writ was returnable die Sabbati, &c. and not die Veneris, &c. The Defendant rejoyns and maintains his Bar, and traverses with an absque hoc, that it was returnable die Sabbati, &c. and to this the Plaintiff demurs: The first Exception which was shewn

When the appearance must be.

Conditions.

Surplusage.

Diversity.

Condition.

The Form of the Statute not pursued.

To appear apud Westm. ubicunque, &c. uncertain.

Impossible.

Where the Bond is deficient, and where it enjoins more than is required.

When the Defendant must appear.

The Bond was to appear die Sabbati, and the Writ was to appear die Veneris.

Cro. Jac. 286. See Plo. Com. 62. b. usque 69.

2 Leon. 78. Case 133.

Scryven verf. Dyther, Cro. El. 672.

Barton verf. Lowe, Styles Rep 234.

Bennet verf. Filkins, Mich. 18 Car. 2. in B. R.

Shewn was, that the Defendant was concluded to say, that the Writ was returnable die Veneris, &c. because the Condition of the Bond had concluded him; But the Court was against this Exception, for the Statute makes all Bonds taken by Sheriffs void, if not according to the Statute, notwithstanding the recital in the Condition, otherwise the Statute would be of little force. Secondly, it was moved, that the Resjoinder was not good, because the Defendant ought to maintain his Bar, and conclude, Et de hoc pon. se super patriam, &c. there being a negative and affirmative before, by the Bar and Replication: But Twissden and VVindham Justices were of Opinion, that the Resjoinder was good enough, because it was material to enquire, whether there was any Writ returnable die Sabbati, for the Defendant in his Bar says, that he was taken by Writ returnable die Veneris, which being different from the Condition of the Bond, doth not warrant it; and the Plaintiff in his Replication says, that he was taken by the same Writ mentioned in the Condition, so that if he had said no more, there had been only two affirmatives; and his Allegation that there was no false Writ, being not material to the Issue, the Defendant made a good Traverse in his Resjoinder, and according to these Opinions it was afterwards adjudged.

Condition.

Esoppel.

Recital.

Conclusion.

Resjoinder.

Traverse.

Plo. Com. 65. And all Bonds in other manner and form, taken by colour of their Offices, shall be void: This Act, as hath been before observed, hath abridged the Common Law, as to Bonds taken by Officers, and tied them to a strict form; but this Caution must always be observed, that this being a particular Act in a generality, it ought to be pleaded when any Bond is to be avoided, otherwise the Court cannot take notice of it; and although the Statute speaks generally of all Bonds made in other form, &c. yet it is to be intended of the matter of the Bonds, as to the Sheriff: These Words, by colour of his Office, are general Words, and extend to other Bonds taken colore Officii, as to those taken of persons in their Ward; for where the Sheriff upon the executing of an Execution, took a Bond for the payment of his Fees, and brought an Action upon it, the Defendant pleaded to it the Statute of 23 H. 6. and the Court conceived, although he might have such Fees as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fees: But where the Sheriff hath taken Goods in Execution, and afterwards takes a Bond of the Defendant to pay the Money at the day, this Bond is good, and not to be avoided by the Statute; but where a Sheriff, &c. takes a Bond of his Prisoner for Meat and Drink, &c. this is colore Officii, and yet utterly void, for the Law saith, if a Man be in Execution he ought to live of his own, and the Plaintiff nor the Sheriff are not bound to give him Meat nor Drink, but if he hath nothing to live upon, then he must live upon the Charity of others, and if that fail, the Book saith, Let him die in the Name of God. It is likewise to be observed, that although the Statute here makes mention of Bonds, &c. only, yet Promises made against the intent of this Statute, come likewise under the lath of it; and so it was adjudged, Mich. 32 Eliz. where the Plaintiff declared, that he had taken the Body of one H. in Execution, by Warrant directed to him as Special Bailiff; the Defendant as well in consideration that the Plaintiff would permit him to go at large, as of 2 s. paid in hand, promised to pay the Plaintiff all the Money in which H. was condemned; and it was moved, that this consideration was void, being contrary to 23 H. 6. and although it be joyned with another consideration, yet it being void as to part, shall be void in all: So likewise

He which will take advantage of this Act, must plead it.

To what Bonds this Statute extends.

The Sheriff cannot take bond for his Fees.

But to pay money to him at the Return of the Fi. fa. he may take Bond.

Not for Meat and Drink, &c. he cannot take it.

For if the Prisoner be poor, he must live upon Charity, or starve.

What promises are within this Statute.

Bewfages Cafe  
10 Co. 100,  
101, 102.

Plo. Com. 67.b.

Fetherston  
vers. Hutchins,  
Cro. Eliz. 199,  
200. Plo. Com.  
in Manning-  
ham's Cafe.

*Promise made to a Gaoler to suffer a Prisoner to go at large, void.*

where J. S. promised A. Gaoler, that if he would let a Prisoner which he had then in his Custody go at large, that then he would pay him so much Money, for the breach of which an Action was afterwards brought, and a Verdict thereupon had, but Judgment was said by the Opinion of the whole Court.

*Blicham verf. Martin, 2 Bulstrode 213.*

## C A P. III.

## Sheriff Fees.

## S E C T. I. What Fees Sheriffs may lawfully take, and how to be recovered.

*What Fees Sheriffs, &c. may take upon executing Executions.*

*Not to extend to Corporations.*

**B**y the Statute of 29 Eliz. cap. 4. it is enacted and directed, That upon Extents and Executions, the Sheriff shall or may take twelve pence of and for every Twenty shillings, where the Sum exceeds not one hundred pounds; and six pence of and for every Twenty Shillings being over and above the said Sum of one hundred pounds; Provided, that this Act shall not extend to any Fees to be taken for any Execution to be had within any City, or Town-Corporate. 29 El. c. 4.

*1. Quest. Whether Debt lies for the Sheriff upon this Stat.*

*2. Quest. Who shall have the Fee, whether Sheriff or Bailiff.*

*Whether the old or new Sheriff shall have it.*

*3. Quest. How much he shall have if it exceeds 100 l.*

*If he enters a Corporation, what Fees he shall have.*

Upon this Statute several Questions have been raised :

1. Whether Debt lies for the Sheriff for his Fees: and it hath been adjudged that it doth; for when a Statute doth not express what remedy shall be had for a Fee or Forfeiture, &c. in such Cases Debt lies for the same. *Walden verf. Vestey, Latch Rep. 19.*

2. The second Question upon this Statute is this: The Sheriff makes a Warrant to the Bailiff of a Liberty, to make Execution, whether the Sheriff or the Bailiff shall have the Fee: because the Statute says, that the party which makes the Execution shall have the Fee.

Also, if the old Sheriff makes an Extent, and afterwards the new Sheriff makes the Liberate, what Sheriff shall have the Fee, and which of these Sheriffs shall be said to make Execution?

3. The Third Question hath been, (whereas the Statute says, That the Sheriff shall have 12 d. in every 20 s. where the Debt exceeds not 100 l. and 6 d. for every 20 s. where it is above 100 l.) whether the intent of this Statute is, that if the Debt be 140 l. the Sheriff shall have for the 100 l. 12 d. in the pound, and 6 d. in the pound for the 40 l. or but 6 d. in the pound for the whole 140 l.

Also, whereas the Proviso in the said Statute says, That these Fees shall not be taken, for any Executions had in any Town-Corporate, and the Sheriff enters into a Corporation, and executes an Execution, whether he shall have the Fee, or whether this Clause extends only to Executions upon Judgments in inferior Corporations? *Latch 17.*

*Debt lies by the Sheriff for his Fees for executing an Execution.*

As to the first point: Trin. 36 Eliz. in C. B. Debt was brought by the Sheriff of London, for Fees for executing a Cap. ad satisfac. for 12 d. in the pound for the first 100 l. and 6 d. in the pound for the residue, and it was demurred unto by the Defendant; and the only cause insisted upon was, whether this Action lies or no, there being no Action given by the Statute: But the Court held that it did well lie, sed adjournatur. And afterwards in Mich. 8 Car. the same Action was brought, and upon a Writ of Error Judgment was affirmed: So likewise where *Gurny and Somes Case, Cro. El. 335.*

*Lyfster verf. Bromly, Cro. Car. 286, 287.*

Stanton vers.  
Sulyard, Cro.  
El. 654.

See Symfons  
case, cited int.  
Lyfter &  
Bromly, Cro.  
Car. 287.

Symfons &  
Bathurst, cited  
int. Lyfter &  
Bromly, Cro.  
Car. 287.

23 H. 6.

Empfons Case,  
Latch Rep. 20.

Empfon vers.  
Barhurst,  
Winch Rep.  
51.

Walden & al.  
vers. Vefy &  
al. Latch Rep.  
51. & 17.  
Lyfter vers.  
Bromly, Cro.  
Car. 286.  
Prob. vers.  
Lumly, Pasch.  
14 Jac. Rot.  
531.

where the Defendant promised, that in consideration that the Sheriff would execute an Execution for him, he would pay him so much, &c. (which was allowed by the Statute for him to take) and Glanvil Justice was of Opinion, that this was a void consideration, because at the Common Law a Sheriff ought not to take any Fees, but it was Extortion; and this Statute is made only to discharge a Sheriff from Extortion, if he take only such Fees as the Statute allows him to take; but the Statute gives him not any remedy for them, for he ought to execute the Writ at his peril, otherwise he shall be punished, and it is no excuse for him to say, that the party would not pay him his Fees: But all the other Justices held it to be a good consideration, because the Execution was made at his request, and to be a benefit to him, and by the Words of the Statute the Sheriff may lawfully take his Fees, and consequently promise to have them paid: The Sheriff may lawfully take his Fees. But it hath likewise been adjudged, that where the Sheriff took a Bond for the payment of his Fees, to which Bond the Defendant had pleaded the Statute of 23 H. 6. that he had thereby avoided it; for the Court conceived, although he might take such Fees as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fees. He must not take a Bond for them.

As to the second Point, constant Practice ever since the making of the Statute hath been, that the Bailiff of the Franchise shall have the Fees: The Reasons may be, first, because the Statute says, that he that executes the Execution, shall have the Fee: And secondly, although I find this Point moved in Latch 52. yet I find it not stirred in any other Book; from which this Conclusion may be drawn, that the Practice being so to this day, and no authority to contradict it, then consequently the Law is so likewise. What Fees Bailiffs of Liberties shall have.

But as to the other Point it hath been adjudged, that if the old Sheriff makes an Extent, and before the Liberate a new Sheriff is chosen, here the new Sheriff shall have the Fees appointed by the Statute, and not the old Sheriff. Whether the old or new Sheriff shall have the Fees.

As to the third Point, viz. What Fees, &c. It was alledged and argued by the Plaintiffs Counsel, to the first branch, that the Sheriff shall have 12 d. in every 20 s. for the 100 l. and 6 d. for every 20 s. above 100 l. because the greater the Sum is the greater is the Sheriffs labour and hazard, for fear of Escape; and it would be contrary to reason, that his wages should be less for 180 l. than for a 100 l. Where the Sheriff is to have 12 d. in 20 s. and where 6 d. Escape.

To the second branch he argued, that the Sheriff shall have his Fees notwithstanding the Proviso; 1. Because no man will deny, that if the Sheriff takes a Prisoner near the Walls of the Town, but that he shall have his Fee, therefore there is no reason to the contrary, when he takes a Prisoner within the Walls. Sheriff. Corporation.

And doubtless the Proviso is to be intended of Executions, made upon Judgments given in inferior Courts in Corporations, for it is not reason, that the Bailiff or Sheriff should have so large Fees for taking a Prisoner which perhaps may live the next door to him, as he shall have for travelling about the County to take Prisoners: If the Law were not so, then doubtless these two great inconveniences would follow: The Proviso extends only to Executions upon Judgments given in inferior Courts.

1. The Sheriff having no Fee, would be very slow in making Executions, where the party lived in a Corporation, and so Justice, and the Execution of Justice, which is much favoured in Law, and is fructus & effectus Legis, would be very much delayed. The inconveniences, if it should be otherwise.
2. If this Construction should not be made, Corporations would become an Asylum and Refuge for decayed persons.

And

*The difference where the City is likewise a County.* And accordingly Judgment was afterwards given by the whole Court for the Sheriff Plaintiff. But Doderidge Justice said, where a City is also a County, there if the Bailiff or Sheriff makes Execution, perchance he shall not take the Fees limited by the Statute. Jones Justice, it will be a Question, if an Execution issue out of the County to take a Prisoner in a City, and the Sheriff makes his Mandate to the Bailiff, whether he shall have the Fees by the Statute; but if the Town be also a County, there the Sheriff upon Execution out of this Court ought to have his Fees. Latch. 52.

*Where the Sheriff makes his Warrant to his Bailiff.*

*What Fees, &c. Sheriffs shall have.*

*What Fees to be paid for Executions in Corporations.*

*Must take no Fees upon Capias Utlagat.*

*Promise to pay 40 s. &c. for an Arrest, is against the Stat.*

*And void by the Common Law.*

So likewise it was adjudged, First, That the Sheriff should have for the first 100 l. 12 d. in the pound, and but 6 d. for every 20 s. above 100 l. Lyster verf. Bromly, Cro. Car. 286, 287. & Gurny & Somes case, Cr. El. 335. agreeeth expressly.

2. That this Proviso shall not extend to the executing of Executions from the Superior Courts at Westminster, but only for the executing of Judgments obtained in the Courts of the Corporations. Wilshires case Herleys Rep. 52. 2 Brownl. 283.

Thus much touching Fees for executing Executions.

It was adjudged by the Court, that Sheriffs, &c. ought not to take any Fees, either for the breaking up, executing or retorning of a Capias utlagatum. Batho verf. Salter, Latch Rep. 54, 55, 56.

So likewise, where the Defendant promised the Plaintiff, that in consideration that he would procure a special Warrant from the Sheriff, and would arrest J. L. that he would give him 40 s. and he sets forth, that he had procured a Warrant and arrested him, per quod, &c. And it was hereupon moved in arrest of Judgment.

1. That this consideration is against the Statute of 23 H. 6.
2. Admitting it to be out of the Statute, yet it is void by the Common Law, because it is Extortion to take greater Fee than the Law allows, to which all the Court agreed, and gave Judgment accordingly. 23 H. 6.

## S E C T. II.

What the Sheriff may do in the Executing of Cap. Utlagat.  
Process and Executions, &c.

*In the Execution of a Cap. Utlagat, the Sheriff may take Posses Com. and break open the House.  
Craft and force in executing a Mesne Process, punished.*

**U**PON a Capias Utlagatum delivered to the Sheriff in Court, it was moved that the Sheriff should be commanded to execute the Writ, who replied that he could not do it, because the Defendant kept his House, to whom the Court answered that he might take Posses Comitatus with him, and break open the House. Hare verf. Curson, Goldsbr. Rep. 79. Semain verf. Gresham, Cro. El. 908, 909. Park & al. verf. Evans, Hob. 62.

The Sheriffs Officers with a Warrant upon a Mesne Process came to the House where the Defendant lodged, and knockt at the door, whereupon the House-keepers Wife came to the door, and opened it a little to see who was there, and the Bailiffs presently with their Swords drawn rusht in by force, and went up to the Chamber-door, where the Defendant lay, broke it open and hurt divers in the House.

It was holden by the Court that the Entry was unlawful, for the opening of the door was occasioned by craft, and their entering in, was by violence, for which Offences they were all fined.

So likewise where J. S. and J. N. were bound to C. and C. obtained Judgment against J. N. but forbore the executing of it, to see if any Agreement could be made; at length C. took of J. N. his Debt and Charges, and assigned over his Bond to J. N. to sue S. in his Name, whereupon J. N. sued forth a Latitat against J. S. in the Name of C. and withal a Cap. Utlagat. after Judgment at the suit of one J. D. a Stranger, and sent them both to the Sheriff, the Sheriff enters the House, Waterhouse & Ux. verf. Saltmarsh, Hob. 263, 264.

House, (the outer door being open) and being within the House, and sit Tailiffs with him, shut the doors, drew their Swords, and present-ly two of them with their Swords drawn, ran up to the Chamber where the Defendant and his Wife were in bed, (the door being locked) and then knocking a little, without telling who they were, or where-fore they came, broke open the door, and took him, and took Bond for his appearance upon the Lat. and 40 s. for suing out a Superedeas upon the Outlawry, and so discharged him. For this the Sheriff was fined 200 l. (viz.) for the unnecessary Terror and Outrage of this Arrest, and for not signifying that he was Sheriff, that the door might have been opened without violence, but especially for discharging the Plaintiff upon the Cap. Utlagatum.

Buckwood &  
Beals Case,  
1 Brownl. 210,  
211.

If the Sheriff execute a Capias, and there is no Original to war-rant it, or execute an Execution where there is no Judgment to war-rant it, yet he is excusable; but if Proceſs come to him to arrest J. S. and he arrests by virtue thereof J. N. or if Execution comes against the Goods of J. S. and he takes the Goods of J. N. there he is a Trespassor, for he must take notice of the person and of the Goods at his peril, but if the Plaintiff comes to the Sheriff, and shews him Cattle, and tells him, they are the Cattle of J. S. whereas they are the Cattle of J. N. there the Sheriff shall have an Action upon the Case for this false affirmation.

Weaver verſ.  
Clifford, Bullſt.  
2 Rep. 63, 64,  
65.

The Sheriff is not to take notice of Error in Proceſs, because he is not a competent Judge thereof, he is only a Ministerial Officer, to execute such Writs as are directed, which if he omits, he is pun-ishable.

What the Sheriff may do upon Executions against the Goods.

Cro. 44 El. in  
B.R. 1 Brownl.  
50. 5 Co. 91.  
Cro. Jac. 555.  
Semaynes Case  
Cro. El. 908,  
909.

The Sheriff upon a Fieri Facias may not break open the outer door of the House to enter and make Execution, but if the outer door be open, then he may well enter and break open any Chamber door, or other door which is locked; he may likewise break open any Chest, and take the Goods which are therein in Execution, and if he doth not, an Action upon the Case will lie against him.

Note, He must therein avoid all Craft and Violence, vide ante, Waterhouse verſ. Saltmarsh.

Day verſ. Buf-  
bitch, 37 El.  
Rolls tit. Exe-  
cut. 891.

The Sheriff cannot upon a Fieri Facias take down a Furnace, &c. But Furnace and sell it, because this would be waste, which the Law will never permit.

M. 31 & 32  
El. Pard and  
Mofſ verſ.  
Howe, Rolls  
tit. Execut. 893

If a Man recovers against J. S. as Executor to J. N. and sues out Execution de bonis Testatoris, li, &c. & si non tunc miſ. &c. de bonis propriis, and afterwards and before Execution made by the Sheriff J. S. dies, if the Sheriff doth not find any of the Goods of J. N. he may execute the Writ upon the proper Goods of J. S. which he had at the time of Execution awarded, although that they are now in the Hands of his Executor or Administrator, without suing out a Scire Facias, be-cause they were bound by the award of the Execution.

Cro. El. 174.  
Parks & Mof-  
ſes Case, Cro.  
El. 181.

So likewise if a Fieri Facias is sued out against the Goods, and after the Telle of it, and before the Sheriff execute it, the Party sel- leth the Goods bona fide, yet they may be taken in Execution in whose hands soever they come, for they are bound by the Award of the Execution.

Boucher verſ.  
Wiſeman, Cro.  
El. 440.

Upon an Action of Trover for Goods, the Defendant pleaded a Re-covery, and a Fieri Facias thereupon directed to the Sheriff who had seized the Goods, and delivered them to him in satisfaction of his Cre-

The Sheriff must not enter by violence, or with drawn swords. Nor breaking open doors, where no opposition is made. Fined for the outrage, and for discharging the Defendant in the Outlawry. Nora, the Sheriff excusable, though there be no Original or Record to war-rant the Proceſs brought to him. The Sheriff at his peril must take notice of the right person, and the right Goods.

Plaintiff pun-ishable for his false affirmati-on, to induce the Sheriff to take either the wrong person or goods. Although Proceſs be erroneous, yet the Sheriff must not take notice thereof. What the Sheriff may do upon the Execution of a Fieri Facias. May open a Chamber, or a Chest.

But Furnace first, not to be removed by Fieri Facias. In some cases the Sheriff may take Goods in the Executors hands, without Fieri Facias.

Goods are bound by the Telle of Execution.

Fieri Facias.

The Sheriff cannot deliver Goods taken in Execution to the Plaintiff in the ſame Action in ſatisfaction of his Debt.

He may ſell Goods by him taken in Execution upon a Fi. Fa. without a Vendit. expon.

How Execution to be levied upon a Corporation.

Where Goods are undervalued by collusion, the Sheriff or party may be indicted for oppreſſion. Term for years how to be extended.

Ca. Sa. He muſt not break open the door to execute a Ca. Sa. Judgment againſt two, and one taken in Execution.

Eſcape.

Newgate is a ſeveral Priſon, both for London and Middleſex.

A Priſoner in Newgate in London ſide, ſhall not be charged with Actions in Middleſex.

When a Man ſhall be ſaid to be in Execution, and the Sheriff chargeable with him, before he hath him actually in his Cuſtody.

Where a common Recovery is had of ſeveral Houſes, the Sheriff may deliver poſſeſſion in one, in the Name of all.

But it is otherwiſe where Houſes are recovered by Ejectment.

Execution; whereupon the Plaintiff demurred, and it was reſolved that the Sheriff cannot deliver Goods to a Plaintiff, (upon a Fieri Facias) in ſatisfaction of his Debt, for the Sheriff by the Writ is to levy the Debt, and to return his Writ to the Court, that they may adjudge whether Execution is well made or no.

The Sheriff may, if he think fit, ſell the Goods without a Venditioni exponas, and the Sale ſhall be good.

If a Man recover damages againſt a Corporation, he ſhall not have Execution againſt every Man of the Corporation in their natural capacity, but of the Goods of their Corporation only.

The Under-Sheriff took Goods upon a Fieri Facias, and did not ſell them to half the worth of them, and upon Motion it appeared to the Court that he had perſwaded the Jury to undervalue the Goods, and according to his perſwaſions the Jury appriſed them, and then the Sheriff ſold them for the ſame Money for which they were appriſed. The Court held that this was a grand oppreſſion, and thereupon ordered an Indictment againſt the Under-Sheriff.

How a Term for years muſt be extended, Vide Chap. Elegit in the Suppl.

What the Sheriff may do upon Executions againſt the Body.

Upon a Capias ad ſatisfaciendum, the Sheriff muſt not break open the door of any houſe to execute it, if he do, he is puniſhable.

Two perſons were condemned in Debt, one of them is taken by a Ca. Sa. and afterwards ſuffered by the Sheriff voluntarily to eſcape; afterwards the other was taken in Execution, and he upon this matter brought an Audita Querela, becauſe the one is diſcharged, not by his own wrong, but by the Sheriffs act, againſt whom the Party is put to his remedy, but per Curiam this is no cauſe to diſcharge him.

Upon a Ca. Sa. to the Sheriff of Middleſex to take J. S. the Sheriff took him, and put him into Newgate, (which is the Common Priſon both for London and Middleſex) afterwards Execution came to the Sheriffs of London; now although the Sheriffs of London are alſo Sheriffs of Middleſex, and Newgate is the Priſon for both Counties, yet the Priſoner ſhall not be in Execution upon the Writ into London, nor may the Sheriffs of London ſerve this upon him, becauſe though the Priſon ſtand in London, yet he is in another County, as he ſtands charged, for when the Commitment is to Newgate, by force of a Writ to the Sheriff of Middleſex, he cannot be ſaid to be within the County of London, though the Priſon ſtand in London, for the Counties continue ſeveral, and the Priſons ſeveral in reſpect of the ſeveral Commitments.

If one be delivered to the Sheriff in Execution by the Kings Writ, the Party is preſently in Execution in the Sheriffs Cuſtody, without his laying his hands on him.

How to be made upon an Habere facias poſſeſſionem.

If a Common Recovery be had of divers Meſſuages, the Sheriff upon the Writ of Execution may make Execution in one of them, in the name of all, without going to every one in particular; but if a Man is to be put in Execution of divers Meſſuages upon a Writ of Execution, and the Houſes are in the poſſeſſions of ſeveral Men, he ought to go to every houſe particularly, and to deliver ſeiſin thereof,

Dyer 219. & Bailes verſ. Domming, Paſch. 16 Car. 2. Reg. Rot. 338. in B. R. Thomſon verſ. Clerk, Cro. El. 504.

Ayre, verſ. Arder, Cr. Jac. 73. Rolls tit. Execution 900.

Sayers Caſe, Cro. Jac. 526. & Sly verſ. Finch, Cro. Jac. 514. 515.

Semaine verſ. Grefham, C. o. El. 908. Blofield's Caſe, Cro. El. 478.

Coas Caſe P. 17 Jac. Rolls, tit. Execution, 894.

Queſth & Ux. verſ. Carpenter, 3 Bullſtr. 62.

Rolls tit. Execution. 886. Floyd verſ. Better, Rolls tit. Execut. 886.

- of, for delivery of Seisin in one, in the name of all, when they are in several Mens possessions is not sufficient.
- Rolls tit. Execut. 886. If a Man upon an Ejectment for 40 acres of Land, recovers 30. and not the residue, upon the Habere fac. possess. the Sheriff may deliver three or more of the Acres, in the name of the whole, without dividing of it by Peers and Bounds.
- Ibid. If an Habere fac. possess. go to the Sheriff to put a Man in possession of twenty Acres of Land, the Sheriff ought to give him twenty Acres in quantity, according to the Custom of the Country where this is, and not according to the Statute.
- Ibid. & 22. Ash 24 per Thorpe. If a Man recover Rent or Common, whereupon a Writ of Possession issue out, and the Sheriff comes upon the Land, and delivers Seisin of the Rent or Common by word only, this is well done, and the Recoverer is in actual possession by it.
- Semaines Case. 5 Co. 91. The Sheriff upon an Habere fac. possessionem, after a Demand made to open the door, may break open the door, to deliver possession of the House.
- Land may be delivered in Execution, without setting forth the meets and bounds. If the Writ is for 20 acres, so much by estimation of the Country must be delivered. Upon a Recovery of Rent or Common, the Sheriff may deliver possession by word only. Upon an Habere fac. possess. the Sheriff may break open the door.*

## S E C T. III.

## Of Executions by Elegit and Extents.

- Cowly ver. Lideor. 2 Bull. 97. 4 Co. 65. a Garraway ver. f. Harrington, Cro. Jac. 567. Sparrow ver. Matterlake, Cro. Car. 319. Tr. 9 Car.
- A** n Extent upon an Elegit must be by Inquisition, per sacramentum duodecim proborum & legalium hominum, &c.
- So likewise must an Extent, upon a Recognisance or Statute, otherwise it is Error.
- Although Elegits, &c. are always directed to the Sheriff, yet a Bailiff of a Liberty may execute them within the Equity of the Statute, which grants Elegits. There is a Case to this purpose in Trin. 9 Car. where upon a Demurrer the Case appeared to be thus; The Sheriff returns upon an Elegit that the party had not any Lands, but only in E. and that J. S. Bailiff there, had the Execution and Return of all Writs, who enquired and returned an Extent by Inquisition, and that the Bailiff delivered the Poiety of the Land, so extended to the Party, and the Plaintiff by virtue of that Extent entered and intitled himself, and hereupon the Court held,
1. That the Extent there made by the Bailiff of the Liberty by Warrant from the Sheriff, was good.
  2. That the Jury ought to find all the Land, and that the Bailiff (or Sheriff where no Liberty is) shall deliver the Poieties, and not the Jury.
- So likewise where the Sheriffs of London grant their Warrant to a Serjeant at Mace, to extend Lands upon an Elegit, it was adjudged, that the Execution was well executed, for the Statute of Westm. 2. cap. 18. which provides that Process shall be made to the Sheriff, is to be extended by Equity to all other immediate Officers, as to every other of the King's Courts of Record, & eo potius, because the Elegit and Fieri Facias are coupled together, and limited, both to be executed by the Sheriff, and yet without question a Serjeant at Mace may execute a Fieri Facias.
- Elegit how to be executed. Extent how to be executed. Extent may be executed by a Bailiff of a Liberty. The Jury must extend the Land and the Sheriff must deliver it. An Elegit executed by a Serjeant at Mace. The Statute of W. 2. cap. 18. is extended to all Sheriffs immediate Officers.*

## S E C T. IV.

What Lands shall be delivered in Execution, and when.

**T**WO persons recovered severally against one in Debt, and he who had the first Judgment, first sued out an Elegit, and had a Moiety delivered to him; afterwards the other sued out an Elegit, and the Sheriff prayed the advice of the Court, what Return he should make, whether he should deliver the other Moiety of the whole, which was all that remained to the Debtor, or but a Moiety of that Moiety, and it was the Opinion of the Court, that he should return but the Moiety of that Moiety which was left, but they advised the Sheriff to return the special matter.

*The Sheriff delivered a Moiety of the Land in Execution, and afterwards received a second Writ.*

*Whether a Moiety of a Moiety, or the entire remaining Moiety shall be delivered in Execution.*

*Entail Lands not extendible by Statute or Elegit.*

*But ancient Demean may. A Reversion how it may be extended.*

*Lease for years how to be extended.*

*Mistake by the Sheriff.*

*General Return.*

Entailed Lands in the hands of the Heir are not extendible neither by Statute nor Elegit.

But Lands in ancient Demean are extendible upon an Elegit.

So likewise where a Man leases for years, rendering Rent, the Reversion may be extended upon an Elegit, during the Lease, and the Tenant by Elegit shall have the Moiety of the Rent.

An Inquisition upon an Elegit found that the Defendant was possessed of a Lease for years, commencing at Michaelmas 2 & 3 Ph. & M. whereas in rei veritate, it began at Michaelmas 3 & 4 Ph. & M. and the Sheriff made Sale of it according as the Jury had found it, and the Court held that the Sale was not good, because there was no such Lease which the Sheriff had sold, and there being no such Lease, then consequently the Sale is void; but if the Jury had found that the Defendant was possessed of such Lands; pro termino diversor. annor. adhuc ventur, and then had appraised it, it had been good enough, although there had been no certain beginning nor ending set forth, Quod Nota.

*Hoyt vers. Cogan, Cro. El. 482, 483.*

*Sir Jo. Ashburnham, & Dom. St. John Cro. Jac. 85. Cox vers. Barnsly, Heb. 47.*

*Sir Tho. Cambels case, Rolls tit. Execution, 894. Palmer vers. Humfreys, Cr. El. 584.*

## S E C T. V.

What the Sheriff must do when a *Superfedeas* is sent to him

*After Goods are taken in Execution (although they are not sold) a Superfedeas comes too late.*

*The shewing of the Writ of Error to the Sheriff, is a Superfedeas in Law.*

*A Superfedeas comes too late to the Bailiff, if it come after he hath taken the body, although the Sheriff had it before.*

*If a Superfedeas comes to the Officer before the Writ executed, it is time enough, but if afterwards, how to return it.*

**A** Fieri Facias came to the Sheriff, to levy Goods, who returned, that he had taken Goods in his hands to the value of part of the Debt, and that they remained in his hand, pro defectu emptorum, and that before the Return of the Writ, there came a Superfedeas upon a Writ of Error to him, which Writ he returned annexed to the Fieri Facias. It was the Opinion of the Court, that notwithstanding the property was not altered, yet a Venditioni exponas should be awarded.

It was agreed by the Court, that the shewing of a Writ of Error to the Sheriff, was a sufficient Superfedeas of the Execution.

In an Action of false Imprisonment, the Case was thus, One recovers in Debt, and a Ca. Sa. delivered to the Sheriff, who made a Warrant to his Bailiff to do Execution, afterwards and before the Ca. Sa. executed, a Superfedeas was delivered to the Sheriff, but the Bailiff having no notice of the Superfedeas, executed the Ca. Sa. The whole Court were of Opinion, that this was not false Imprisonment in the Bailiff, he not having notice of the Superfedeas.

If a Capias comes to the Body, and before it is executed, a Superfedeas comes, there the Sheriff must discharge him, but if he is first taken, and then a Superfedeas comes, the Sheriff must at the Return of his Writ return the Body, together with the Superfedeas.

*Dyer 98.*

*Mich. 15 Car. in B. R. Marlb.*

*Price vers. Alington, Cro. El. 918.*

*Tr. 39 El. Goldsb. 96.*

*Withers vers. Henly, 3 Bullst Rep. 96, 97. See the same Case, in Cro.*

*But Jac. 27.*

But if a Man is taken in Execution, and the Plaintiff at whose Suit he is taken comes to the Sheriffs, and tells him, that he hath released the Prisoner, and therefore he should deliver him out of Prison, and the Sheriff doth not so, but still keeps him, here an Action of false Imprisonment lies against the Sheriff.

Mrs. Bowes  
Case, Hetleys  
Rep. 30.

A Superfedeas was prayed, because the Sheriff by virtue of a Will of Middlesex, had arrested a Man in London, but the Court would not grant it, because a Superfedeas never issues out but when a Writ erroneously emanavit, but the remedy in this Case is, to bring an Action of false Imprisonment.

King vers. Hill.  
Cr. Jac. 43.  
Yelv. 57.

A Superfed. was delivered to the Sheriff, to stay the Return of a Distring. at the Assizes, which the Sheriff did not obey, but returned it notwithstanding, and it was therefore adjudged Error, and the Judgment reversed.

Thomas vers.  
Owen, 2 Bullst.  
194

As the Sheriff was going to execute an Habere fac. possess. there came a Superfed. to him, which he refused to obey, but delivered possession, and thereupon the Court granted an Attachment against the Sheriff, and a Writ of Restitution to the Party.

*A Prisoner in Execution may be discharged by Parol. And to keep the Prisoner afterwards is false Imprisonment. No Superfed. shall be granted where an Arrest is made in London, by virtue of a Bill of Middlesex. Where it is Error to proceed after a Superfed. The Sheriff must obey a Superfed. which comes to him before Execution actually executed.*

## S E C T. VI.

Where the Sheriff shall discharge himself by returning a Rescous, and where not, and when well returned.

Sheriff of Surrey vers. Ad-derton, Hetley  
145.

**T**HE Sheriff took Goods upon a Fieri Facias, and at the Return of the Writ returned a Rescous, the Court held the Return to be void, for it is of Goods, of which no Rescue can be, and he ought to raise Posse Comitatus.

*Rescous is no Return to a Fi. Fa.*

May vers. Proby, & al. Cro. Jac. 419. & Hodges, & Marks, Cro. Jac. 485, 486. But Walslow vers. Lambert in Cro. El. e contra.

But upon an Arrest upon a mean Process, where a Rescous was made, and an Escape brought against the Sheriff, the Sheriff pleaded the whole matter, and after divers Arguments it was adjudged for the Sheriff; for the Arrest being but upon mean Process, and not upon Execution, the Sheriff is not bound to take Posse Com. with him, and therefore to such a Process Rescous is a good Return; but if the Prisoner had been once in the Gaol, the Sheriff ought at his peril to keep him, and a Rescous from thence is no excuse for him. So likewise if a Prisoner is taken upon a Ca. Sa. or a Cap. Utlagat. after Judgment, then Rescous is no Return, for the Sheriff at his peril ought to keep his Prisoners in Execution.

*But upon a mean Process it is a good Return, and the Reason why.*

*But not upon a Ca. Sa. or Cap. Utlagat.*

M. 14 Car. B. R. Rolls, tit. Return, 457.

If the Sheriff return a Rescous that J. S. simul cum B. rescusserunt D. out of his custody, this is no good Return against B. because this is not any Averment that B. rescued him, neither is it any good Return against J. S. because it is rescusserunt in the plural Number, which is insensibile.

*A Rescous returned with a simulcum, void Rescusserunt.*

Walfreous Case, Yelv. Rep. 51. for Dyer 69.

The Return must likewise be certain, and therefore where a Rescous was returned, and no place mentioned where the Rescous was made, it was adjudged void for Non constat to the Court, whether the Arrest and the Rescous were within the County and Jurisdiction of the Sheriff.

*The Sheriff should return the place where the Rescous was made.*

M. 49. Styles 155.

So also where the Sheriff returned a Rescous upon A. B. cuit fecit warrantum, but the Sheriff did not aver that A. B. was his Bailiff. He did not say for what cause he made his Warrant, so that it appears not whether it was lawful or not, and for these Reasons it was quashed.

*It ought to be certain. Rescous upon a Bailiff how to be returned. Warrant*

The

*Upon a Bailiff  
how to be re-  
turned.*

The Sheriff returned a Rescous by A. and B. upon his Bailiff to whom he directed his Warrant to execute his writ, and it was moved that the Return was insufficient, because it doth not appear that the Bailiff had Returna Brevium, which ought always to be mentioned upon the Sheriffs Return, and all the Court were of the same Opinion, if the Sheriff had returned it as the Return of the Bailiff of the Liberty, but he returned it in his own name, wherefore it shall be intende his own Bailiff, and so good.

*Lady Russel &  
Woods Case,  
Cro. El. 780,  
781.  
Styles 417. acc.*

*Return, that  
Rescous was  
made from the  
Bailiff's Deputy,  
not good.*

An Action was brought for rescuing one J. S. from the Deputy of the Bailiff of a Liberty, and it was moved that it was not good, because it ought to have been alledged, that he was rescued from the Bailiff himself, or from the Sheriff, sed non allocatur, for there is a difference between an Action upon the Case, where the Plaintiff must shew the truth of his Case, as in rei veritate it is, and the Return of a Rescous, or an Indigment for Rescous, for there it must be said, that it was either to the Bailiff himself, or Sheriff himself.

*Kent vers. El-  
wis, Cro. Jac.  
241, 242.*

*Arrest at six of  
the Clock at  
night in Ja-  
nuary.*

Also where a Warrant was directed to two persons, which were not known Bailiffs, and they in January about six of the Clock in the Evening, entered the House where the Defendant was, (the dooz being open) and one of them having the Warrant in his pocket, and seeing the Defendant, said these words to him, I do arrest you by virtue of a Warrant that I have, but he did not shew his Warrant, nor had it in his hand, nor told him at whose Suit it was, and thereupon the Defendant was rescued, Et si, &c. And it was resolved, 1. That this Arrest without shewing the Warrant, and without telling at whose Suit, until the other demanded it, was legal. 2. That he need not shew the Warrant, until the other disobeyed and demanded it. 3. This Arrest being at six a Clock at night, the dooz being open, was good enough. 4. It was held that for this Rescous the Action was well maintainable against the Defendant by the Plaintiff, for he hath loss, and have his Action against the Sheriff.

*Hodges vers.  
Matts, & al.  
Cro. Jac. 485  
486.*

*Warrant not  
shewn.  
Rescous.  
When he need  
not shew his  
Warrant.  
Action upon the  
Case lies for a  
Rescous.*

*May vers. Pro-  
by, Cro. Jac.  
419. accord.*

C A P. IV.

Of Retorns in General.

S E C T. I.

**S**everal other persons have the returning of Writs, as well as Sheriffs; as in cases of Challenges, &c. Writs are directed to the Coroners, and to be returned by them; but then that must appear upon Record, which if it doth not, it is Error, and not remedied by the Statute of Jeofails.

*Who are to return Writs.  
Where Coroners.*

Where a Warrant is directed to the Bailiff, &c. of such a Liberty, to make Executions, and afterwards and before the Execution thereof, they are removed from their Office, and afterwards they return it, this Return is absolutely void: But if a Warrant is directed to two Bailiffs of a Franchise to execute it, and one of them executes it, the Return of the one in the name of both of them is good enough: But if one Sheriff of London makes his Return without his Fellow, this is no Return at all, and cannot be holpen by the Statute of Jeofails, because the Court knows, that one Sheriff there is two persons.

*Where Bailiffs of Liberties.  
If removed from their Office the Return is void.  
A Warrant to two Bailiffs, returned by one of them, good.  
But not so, where there are two Sheriffs.*

But where a Venire Facias was returned by two Coroners, and the Distringas by three, whereas at the time of the awarding of the Ven. fac. and Return thereof, there were four Coroners; it was agreed by the Court, that this was Error at the Common Law, for Coroners as Ministers ought all of them to join, but as Judges they need not; but now this imperfection is aided by the Statute of Jeofails.

*Return by two Coroners, where there were four is Error.  
But helped by the Statute of Jeofails.*

Where the Sheriff or other Officer returns a Writ, he ought always to endorse his Name on the Writ, otherwise it is an incurable Error, and it hath been so adjudged, (although it hath been objected, that in case of a Distringas or Ven. fac. which are Judicial Processes, it might be amended) for as the Court there observed, the Sheriffs Name not being to it, it is no Return.

*The Sheriff must endorse his Name to all Returns, or else it is Error.  
Distring. Ven. fac. and all judicial Process.  
A Return by one who hath no authority to make it, is void.  
Album Breve.  
Qu. Impedit.*

So likewise where the Writ is returned by one who hath no Authority to do it, it is the same as if it were returned Album Breve.

Upon a Quare Impedit against the Bishop of R. who pleaded, that he claimed but as Ordinary, and that the Clerk which the Plaintiff presented had before contracted with the Plaintiff Symoniacally, and therefore he refused him, and that the Church was then void, and so remained void; whereupon the Plaintiff had a Writ to the Archbishop of C. who returned, that before the coming of this Writ, the Church was full, viz. of one D. ex collatione of the Defendant; it was holden by the Court, that this Return was insufficient, for it is clear, although the six Months pass, yet if the Patron presents, the Bishop ought to admit, although it be after the Title devolved to the Metropolitan; and in this case the Bishop (who is the Defendant) is bound by the Judgment, and the Writ is, that notwithstanding the claim of the Bishop, he admit his Clerk, for the Bishop is but a Servant, and ought to execute the Process of the Court.

*Breve Archiepiscopo.  
Insufficient Return.*

Also in a Quare Impedit, although it be found ex Officio, that the Church was full of B. who was a Stranger to the Writ, and it doth not

*Bishop is but a Servant to the Court, as to such matters.*

*Qu. Impedit.*

Goodwin & Franklins Case, Vouch in the 5 Co. 37. Baynhams Case, 32 H. 8. 18 Eliz. Palmer vers. Porter, Cro. El. 512. Palmer vers. Marsh, Trin. 39 El. Rolls Tit. Return, 458. Lamb vers. Wiseman, Hob. Rep. 70

Hob. 70.

Holdsworth vers. Procter, Cro. Jac. 188. 5 Co. 41. M. 36 El. in B. R. 5 Co. in Rowlands case Bethyl vers. Parry, Cro. Car. 136, 137. Booten vers. Episc. Roffen. Hutton 24.

Boswells Case, 6 Co. 52.

Breve Episc.  
He cannot re-  
torn Pleuarty.

not appear whether he came in by better Title than the Plaintiff had, yet the Plaintiff ought to have a general Writ to the Bishop, and the Bishop cannot retorn upon it, that the Church is full of another, for no Issue can be joined between the Plaintiff and him, for he hath no day in Court.

Quod summo-  
niri possint, for  
per quod sum-  
moniri possint,  
naught against  
two, and doth  
not say, nec eo-  
rum aliquis.

Dower.  
Summoners.  
14 days.  
At the Church-  
door.

Proclamation.  
Proclamation.  
where to be  
made, when the  
Land lies in  
two Parishes.

General Return  
void.

Dower.  
Enquiry.

Proclamation  
where to be  
made.

In Debt against two persons the Sheriff retorned quod non habuit bona aut catalla quod summoniri possint, whereas it should have been, per quod summoniri, &c. 2. It ought to be, nec eorum aliquis habet, 50.

Lancelot verf.  
Johns Cro. El.  
50.

In Dower the Sheriff returned, Pleg. de prof. J. D. & R. R. and the Names of the Summoners, and that after the Summons made, and by the space of fourteen days and more before the Retorn of the Writ, at the most usual Church-dooz of M. magna, where part of the Tene-ments lay, upon the 27th of October, being the Lords Day, immedi-ately after Divine Service, he publicly proclaimed all and singular the things contained in the Writ to be proclaimed, according to the form of the Statute: Exception was taken hereto, First, because the Proclamation was not made at the Church-Dooz where the Land lay, the Land lying in two Parishes; the Court was of Opini-on, that making Proclamation at any of the Dooz of any of the Churches was sufficient; but because he retorned, that he had pro-claimed all and singular in the Writ contained, because he did not ex-press what, for this very cause the Retorn was held to be too general and insufficient.

Allen verf.  
Walter,  
1 Brownl. 127.  
Hob. Rep. the  
same Case.

In Dower after a Judgment by default, and a Writ of Enquiry issued out, and Seisin delivered, and Judgment thereupon, Error was brought and assigned; First, That the Original Writ appears not to be retorned according to the Statute, for the year doth not ap-pear when it was retorned. 2dly. The Proclamation made by the Sheriff doth not appear to be where the Land lay. 3dly. The Re-torn doth not mention, that the Proclamation was after the Summons, as it ought to be, as it is in Allen's Case in Hob. 4thly. It is not said, that he did make Proclamation upon the Land. 5thly. It appears not, that the Proclamation was in the Parish where the Summons was made, as the Statute directs.

Thyn verf.  
Thyn, Stiles  
67.

Allen verf.  
Walter, Hob.  
133.

To these it was answered by the Counsel:

The Objections  
answered.

Where Lands  
lie in divers  
Parishes.

1. That the Retorn of the Original shall be intended to be in the year of the Reign, and not of the Age of the King, though the word Reign be omitted.

2. The Lands lying in divers Parishes Proclamation being made at the Church-dooz of any of the Parishes, is good enough.

3. To the third; the Proclamation is said to be made, prout breve postulat, and that shall be supposed duly done, and implies all requisite circumstances, and he cannot make another Retorn, and it is impossi-ble to be otherwise.

4. To the fourth; it is necessary to Retorn the place of the Sum-mons, it being retorned that it was made secundum formam Statuti, supplies the rest. It was afterwards in fol. 77. argued again and adjourned.

Stiles 77.

But the Writ of Error was afterwards discontinued, for a defect in the Certificate of the Summons, so that these Points were not resolved. Yet they may serve to warn a careful Sheriff how to avoid the like Questions.

Stiles 143.

Fairfax verf.  
Fairfax, Styles  
236.

So likewise in a Writ of Error to reverse a Judgment given in a Dower. Writ of Dower, this Exception was taken,

1. That the Original was not well retorned, for there appears not No Proclamation of the Summons; and though the party appear, yet it was said, it is not helped thereby.

As to this Exception Rolls Chief Justice answered, that the not retorning of Proclamation of Summons is not material; for the Summons is only to make the Party appear, and he hath appeared in this Case; likewise the Statute extends to it, if it were not good Party appear. without it.

1 Leon. 145.  
Cary verf. Davis.

Upon a Latitat the Sheriff returned, that he virtute inde had arrested The Sheriff upon a Lat. returned, that before the Retorn of the Lat. he was delivered by Hab. Corp. Per Master of the Rolls.

Poph. 205.

A Latitat was directed to the Sheriff of London, to take the Body To retorn that of J. S. the Writ was retornable die Jovis, &c. which was All-Saints the Lat. was retornable upon a day which is not dies Juridicus, he suffered the Party to go at large: It was holden by the Court, that the Retorn was insufficient, for the Writ was good, and the detaining of the Party by virtue thereof was lawful, although he could not have the Party there at the said day, wherefore the Sheriff was compelled to bring the Party into Court, which afterwards he did accordingly.

Golfon verf.  
Benner, H. 7  
Jac. Rolls tit.  
Retorn 459.

In an Action of Debt against the Heir, if the Defendant pleads The Heir pleads Riens per discent prater. Writ of Enquiry. Repugnancy.

Newman verf.  
Babington, M.  
8 Jac. B. Regis  
Rolls tit. Retorn 459.

it was sold by the Defendant before the Writ came to him, and adjudged no Retorn, because it doth not stand with the Judgment; but in an Action of Debt against an Executor, the Defendant confesseth the Action, whereupon a Fi. Fa. issued out, here the Sheriff may retorn a nulla bona, for this well stands with the Judgment, because he confesseth only the Action, not that he hath Goods.

Doily verf.  
White, 2 Bulstrode 80.

A Warrant upon a Ca. Sa. issued out against a Woman which was then a Feme Sole; but at the time of Arrest she is married, it is no Retorn for the Sheriff to say that she was married, or Non est inventa, but he must take her notwithstanding, for otherwise he would take upon him to falsifie all the Proceedings which have been before; but if a Capias issues out against a Feme sole, and before she is thereupon taken, she marries, here if she be taken upon this Process, falsie Imprisonment well lies, and the Sheriff may well retorn Non est inventa, the diversity is apparent, Quod nota.

Upton verf.  
Wells, 1 Leon.  
142.

Upon an Habere fac possessionem, the Sheriff retorned, that in the Execution thereof he took the Plaintiff with him, and came to the House recovered, and removed thereout an old Woman and two Children, which were all the persons which upon diligent search he could find in the House, and delivered to the Plaintiff peaceable possession to his thinking, and afterwards departed, and immediately afterwards three other persons, which were secretly lodged in the House, expelled the Plaintiff again, upon notice of which he returned again to the House.

*Sheriff returned that he could not expel the force, wherefore new Execution and Attachment against the Parties.*

*Upon a Writ of possession, the Sheriff Returns, that he was always ready to deliver possession, and that the Plaintiff never came to receive it.*

*Upon an Habere fac. seisinam in Dower, the Sheriff returns an Officer and Refusal.*

*Quod quer. non est profecut. bre. &c. no Return.*

House to put the Plaintiff in full possession, but the others did resist him so as without peril of his Life he could not do it; and upon this Return, the Court awarded a new Execution, because the first Writ was not executed, and also awarded an Attachment against the Parties.

Upon an Habere fac. posses. the Sheriff returns that he was always ready to deliver possession, and appointed divers times for the Plaintiff to come and receive possession from him, at which times he was there ready to deliver him possession, but no body came on the Plaintiffs behalf to receive it, and this was adjudged a good Return.

Also upon an Habere fac. Seisinam in Dower, the Sheriff returned, that he offered her Seisin of the third part, and shewed to the Court what made the third part, by Deeds and Bounds in certain, according to the tenor of the Writ, and she refused to receive them of him, and it was the Opinion of the Court hereupon, (notwithstanding the Exceptions made to the incertainty of the Return) that it was a good Return, that the Court refused to award an Habere fac. Seisinam de novo, for that, they said, would be a new President, the like whereof hath not been seen.

Upon an Habere fac. seisinam, the Sheriff returned, that the Party who ought to take the Seisin, Non est profecutus breve, the Court was divided whether this Return were good or no, but the better Opinion seemed to be, that the Return is void, for the uncertain incindment thereof.

The Sheriff took an inquisition upon the same day on which the Writ was returnable, and yet it was held a good Return; but they held if it had been taken the next day after, and before the quarto die post, that it had been void.

The Sheriff sends his Warrant to a Bailiff of a Liberty to make an Inquisition, and an Extent upon an Elegit, who doth it accordingly, and it was adjudged that it was well made by the Bailiff, and it was likewise adjudged that the Jury shall extend the Land, and the Bailiff or Sheriff (where no Liberty is) shall deliver the Poetices, and not the Jury.

Upon an Extendi facias upon a Statute Staple out of the Chancery, the Sheriff extended the Lands of the Defendant, and he prized the Goods, and seized them into the King's Hands, but did not deliver them; afterwards a Writ de Prerogativa Regis, came to the Sheriff, commanding him to levy 100 l. &c. which Writ was delivered to him after the day of the Return of the first Writ, but the first Writ was not then returned, and thereupon the Sheriff returned the whole matter into the Exchequer, and he was amerced by the Court for making this Return, and was forced to execute the Writ de Prerogativa, for till a Liberate no property is in the Conussee, but they had been privileged from all other Executions, but this of the King.

A Scire facias was sued out at the King's Suit against Executors Testamenti, & ultimæ voluntatis prædicti M. & hæred' terrarum & tenementorum, &c. At the day of the Return the Sheriff returned that the said M. had no Executors, but that Scire fecit W. H. Mil. fil. & hæred. dicti M. quod sit, &c. And upon a Writ of Error brought, it was assigned for Error, that the Return was not good, because the Sheriff did not return him Heir of any Lands or Tenements, but generally that he had summoned the Heir of M. This Point was not resolved the Cause being compounded.

Floyd verf. Be-  
thil, P. 15 Jac.  
B. Reg. Rolls  
tit. Return  
459.

Dyer 11 El.  
278.

Floyd verf. Be-  
thil, P. 15 Jac.  
Rolls tit. Re-  
turn 460.

Bugberris case,  
Cro. El. 180.

Sparrow verf.  
Matterfock,  
Cro. Car. 319.

Stringfellowes  
case, Dyer  
3 E. 6. 67. i

Herberts Case,  
3 Co. 15.

*An Inquisition taken the same day on which it was returnable, good.*

*An Inquisition upon an Eligite taken by the Bailiff of a Liberty, and good.*

*Extendi facias Seizure. Bre. de Prerog. Regis.*

*Special Return. Until a Liberate, there is no property in the Conussee.*

*Sci. fac. verf. Execut. & Hæred. He returns that there are no Executors, but returns an Heir. But he did not return him Heir of any Land.*

Upon

Fyres verf.  
Taunton, Cro.  
Car. 295, 296,  
312, 313.

See before in  
this Chapter.

Flud verf. Pen-  
nington, Cro.  
El. 872.

Dyer 73. a.  
Quare, but in  
1 Inst. 171.  
Resolved.  
32 H. 8.

Bagnal verf.  
Harvy, God-  
bolt, 265.

Bethel's Cafe,  
Cr. Car. 570.

Bethel verf.  
Parry, Cro.  
Car. 189.

Stubs verf.  
Rightwile, Cr.  
El. 102.

Rolls tit. Re-  
turn, 559.  
Rolls tit. Re-  
turn, 460.

Upon a Scire Fac upon a Recognizance in Chancery against C. the Defendant was retourned dead, whereupon a second Scire Fac issued out against the Heir, and Tenenants of the Land of C. which he had tempore Recogn. vel postea, whereupon the Sheriff retourned the Tenant of such Lands, &c. but omitted to retourn any thing concerning the Heir; and three Judges were of opinion, that this Retourn was void, because the Plaintiff names and sets forth that there is an Heir, and there is no Retourn quoad the Heir, so as to him it is, quasi album Breve, and no Retourn; neither is it aided by the Statute of Jeofails, for the Statute helps only insufficient Retourns and Misretourns, but where it is album breve, it is no Retourn, and so out of the Statute.

Upon a Scire Fac. against the Tenenants, upon a Judgment in Debt, the Sheriff retourns Quod Scire fecit J. B. Tenenti unius Messuagii, &c. and hereupon comes J. B. and pleads that he is not Tenant against the Retourn of the Sheriff, and it was thereupon demurred, and adjudged to be no Plea.

A Writ of Partition was brought upon the Statute of 32 H. 8. the Defendant confessed the Partition, and a Writ awarded to the Sheriff, quod partitio fiat; the Sheriff returned the Partition by 12 Men: One of the Parties surmised an inequality in the Partition, and prayed a new Writ, but afterwards resolved, that the first Partition being made by Writ, shall stand good.

In a Writ of Partition, it was found for the Plaintiff, and a Writ awarded to the Sheriff, that he should make Partition; and the Sheriff did thereupon allot part of the Lands in severalty, and for the other part, that the Jurors would not assist him to make the Partition; upon this Return an Attachment was prayed against the Jurors, and a new Writ prayed to the Sheriff; but the Court doubted what to do in it, and took time to advise.

A Venire fac. was returned per T. H. Mil. nuper Vic' Com' prædicti whereupon it was alledged to be Error, it appearing to be returned by one who was nuper Vic', sed non allocatur; for although the Writ be returned by J. S. the Sheriff, at the time of the Grand Sessions, when the Action was tried, as a Writ delivered to him by T. H. his predecessor, in exitu ab Officio, with this Return endorsed; yet it might be well intended, that the Pannel was made and annexed in the time when he was Sheriff.

Likewise where a Venire was returned in this manner; per T. R. Vic' istud breve cum pannello annexato mihi deliberat fuit per T. H. Mil. nuper Vic' in exitu ab officio suo, & sic indorsat T. H. Mil. nuper Vic' and it was moved, that it being returned by the name of nuper Vic. it was no more than if it had not been returned at all, for a void Return is as no Return; but the Court over-ruled this Exception upon the reading of the Record. See the Case at large.

Per Curiam. If Judgment be given against an Executor upon a Demurrer, and Execution awarded, the Sheriff cannot return, nulla habet bona Testatoris, but is to return a Devastavit, as if it had been found against the Executor by Verdict, because he hath charged himself by his own Plea.

But where the Defendant confesseth the Action, there the Sheriff may return a nulla bona, for this stands well with the Judgment.

Upon a Fi. Fa. against an Executor, the Sheriff returns, quod nulla habet bona Testatoris in Balliva sua, prout constare poterit; and this was held a void Return, because the Sheriff at his peril ought to take notice whether he hath Goods or no.

Sci. fa. upon a Recogn. verf. Hared. & Tenenantes.

He returned as to the Tenenants, but nothing as to the Heir.

Void Return.

Stat. Jeofails doth not help it.

It is no Plea against the Return of the Sheriff, to say that he was not Tenant.

Partition.

Inequality surmised.

Partition.

He returns, that as to part the Jurors would not assist him.

Return by the name of nuper Vic.

Another Return by the name of nuper Vic.

Upon a Demurrer by an Executor, the Sheriff cannot to a

Fi. Fa. return a nulla bona, but a Devastavit.

But here nulla bona is good.

Likewise quod nulla bona, &c.

prout constare poterit is no Return.

*After a Verdict upon plene administravit, and Fi. Fa. thereupon, nulla bona is a good Return.*  
*Assets in a Foreign County.*  
*No Averment against the Return of the Sheriff.*

In Debt against Executors, they pleaded, plene administravit; it was found they had Assets, &c. And afterwards there went out a Fi. Fa. to the Sheriff, who returned, that they had not any thing within the County; and it was holden a good Return, because it might be, that the Jury found Assets in another County, as they might well do if they will take notice of it, and yet this Verdict shall not bind the Sheriff.

Pasch. 7 E. 6.  
 Bendlows 23.

Although a Man cannot aver against the Return of the Sheriff, yet he may say, that he who hath endorsed his Name on the backside of the Writ was not Sheriff, because by the Common Law, until the Statute of 2. no Sheriff nor Officer used to put their Names to their Returns; and therefore this Averment, that he which made the Return is no true Officer, is not taken away by the Statute, but remains at the Common Law.

Arundle verf.  
 Arundle, Plo.  
 33, 34. vide  
 Cr. Jac. 11. 12  
 E. 2.

*Averment.*

*Challenge to the Array, because he that made the Pannel was not Sheriff.*

After Issue joyned, and the Jury appeared, the Defendant challenged the Array ore tenus, because it was returned by J. S. two days after he had received his Writ of Discharge; and the Court held, that he could not challenge it for that cause, because it would be a direct Averment against the Record, for it is returned by him as Sheriff, and the Return accepted; but the Court advised him to make his Challenge to the Array, because it was made in favour of the Party: And Issue being thereupon joyned, all this matter was given in Evidence, the Court thereupon directed the Tryers, that it was not duly made and returned, for it was without Warrant, whereupon the Array was quashed.

Hore, verf.  
 Broom Cr. El.  
 369.

*Error brought for Non Summons at the Church-door.*

*The Sheriff returned a Summons.*  
*Averment.*

Upon a Writ of Error brought, it was assigned for Error, that the Defendant was not summoned at the Church-door according to the Statute of 31 El. cap. 3. and that by reason of his default a grand Cape was awarded, and Judgment given against him, and so he lost his Land by default. and indeed the Sheriff returned him summoned at the Church-door: And it was thereupon demurred, whether he should have this Averment or no, or should be put only to have his Action on the Case against the Sheriff: Gawdy Justice was of Opinion, that it was Error, and might well be assigned, but all the other Justices e contra, for that the Common Law if the Sheriff had returned the Party summoned, where he was not, and thereupon a grand Cape was awarded, there was not any Remedy but a Writ of Disceit, for the Judges ought to credit the Officers, and it is not any Error in them to award a grand Cape: So here, for as much as it is of Record before them, that the Party was summoned according to the Statute, they are bound to award a grand Cape; and it is not Error, and this Statute doth not intend to give other remedy than was at the Common Law for the Tenant: but Popham Chief Justice conceived, that the Party might have a Writ of Disceit, if the Proclamation of Summons was not made according to the Statute, because he is not summoned according to Law; but Gawdy and Clench Justices, e contra, because it is a good Summons by the Summoners upon the Land.

Collet verf.  
 Marth, Cro.  
 El. 371. &  
 367, 368.  
 31 El. cap. 3.

*No Remedy but a Writ of Disceit.*

*Exposition of the Statute of 31 El. cap. 3. Disceit lies for not making Proclamation according to the Statute.*

*The Sheriff cannot return, that the Warrant came ad-o tarde, &c. to his Bailiff, &c.*

If the Sheriff return, Feci Retornum istius Brevis G. L. Ballivis Libertat. G. qui habent Retornum Brevium & Executionem eorundem qui mihi respond. quod adeo tarde receperunt, per manus Attorni querentis, quod nihil inde facere potuerunt; this is held to be no Return, for when he says that he returned the Writ to the Bailiffs, it is thereby intended, that it was time enough, for he ought to see that it be delivered to the Bailiff in convenient time, so that the Sheriff hath accepted the answer of the Bailiff contrary to his own Return, and therefore it is his default.

Cr. El. 367,  
 368. Goldsbo-  
 rough 128.

Rolls tit. Re-  
 torn 461.

Nota,

Fulwood's  
Case, 4 Co. 67.

Nota, Although the Words of Ca. Sa. are conditional, ita quod habeas corpus ejus, &c. yet the Execution thereof is good, although the Writ were never returned; so likewise of a Fi. Fa. or habere facias possessionem, and generally of all other Writs of Execution, which are the final Process, and after which no Judgment is to be given: But in case of an Elegit, where an Inquisition is taken, it is otherwise, for there the Writ ought to be returned, to the end that the Court may adjudge upon the sufficiency or insufficiency of the Inquisition.

What Executions are well executed, although they are never returned.  
What Executions are of no effect, until they are returned.

## S E C T. II.

What the Sheriff must do upon a Writ *de Ventre inspiciendo*.

Lady Willoughby's Case, Cro. El. 556.

**T**HIS Writ is granted out of the Chancery, commanding the Sheriff, that he cause the Party to be viewed by twelve Knights, & ad tractandum per ubera & ventrem inspiciend. whether she was with Child, and to certify the same unto the Common Bench; and if she were with Child, to certify for how long time in their Judgments, & quando sit paritura: Whereupon the Sheriff caused her to be searched, and returned, that she was twenty Weeks gone with Child, and that within twenty Weeks gone with Child, and that within twenty Weeks fuit paritura; whereupon another Writ issued out of the Common Bench, commanding the Sheriff safely to keep her in such an House, and that the doors should be well guarded, and that every day he should cause her to be viewed by some of the Women named in the Writ (wherein ten were named) and when she should be delivered, that some of them should be with her to view her Birth, whether it be Male or Female, to the intent there should not be any falsity; and upon this Writ the Sheriff returned, that accordingly he had caused her to be kept, &c. and that such a day, &c. she was delivered of a Daughter.

The substance of the Writ de Ventre inspiciendo.

The Return thereunto.

The Form of the Writ, ad eam salvo custodiend. quosque, &c.  
She must be viewed by Women.

The Return hereunto.

Theakers Case, Cro. Jac. 686.

So likewise the like Writ was afterwards directed to the Sheriffs of London, to cause one M. to be searched, whether she was with Child by her deceased Husband, & quando fuit paritura, (no mention being made of her second Marriage) and this Writ was according to the President in 39 Eliz. of the like Writ against the said Lady Willoughby; and this Writ was returnable in the Common Bench: The Sheriff returned the Inquisition, that by such persons he caused her to be searched, and found her to be enseint, & quod fuit paritura within twenty Weeks; wherefore he now prayed a second Writ out of this Court to be directed to the Sheriff of Surrey, because she was removed with her Husband to W. in Surrey, and there inhabited, that the Sheriff might take her into his custody, and keep her until she was delivered of her Child, that there might not appear to be any false or supposititious Birth; and that in the interim he should cause her to be viewed every day by certain Patrons, named by the Court in the Writ, and that some of them should be at the Birth of the Child, according to the said President of the Lady Willoughby; but because in that Case the Lady was a Widow, and so such a course might well be observed; but here she is a Feme Covert, who ought to habit with her Husband, they would not take such a course with her but left her with her Husband, he entering into a Recognizance, that she should not remove from the House wherein they then inhabited, and that one or two of the Women returned by the Sheriff should see her every day,

The like Writ de Ventre inspiciend. but here the Woman was married to a second Husband.

The Sheriff's return to it.  
Inquisition.

Court would not grant a Writ to remove her Husband.

The Husband enters into a Recognizance, that she shall not remove from his House.

and

*Another Writ  
was awarded, to  
cause her to be  
viewed every  
day by Matrons.*

and that two or three of them should be present at her Travail; for it was said, that this Issue might well be said to be the Child of the first Husband, and should inherit his Land, so as if there were any false or supposititious Birth, the Cousin and Heir might be disinherited: Wherefore a Writ was accordingly awarded to the Sheriff of Surrey, to cause her to be seen every day until her delivery, by two at least of the said Women returned by him, and that three of them or more should be present with her at her Delivery, so as no falsehood might be in the Birth.

Note, After this course observed, she was delivered of a Female Child, who was afterwards by Inquisition, found to be the Daughter and Heir of the said William Theaker deceased.

### SECT. III.

The Sheriff directed what to do in returning Writs touching Multitudes throwing down Fences and Ditches, &c.

*The Form of a  
Writ devised by  
Noy Attorney-  
General against  
those which in  
Multitudes  
throw down  
Hedges and  
Ditches, &c.*

*The Return  
thereof, by In-  
quisition.*

*Thereupon issued  
out a Distring-  
against pro-  
pinquas villa-  
tas, to repair  
the Fences.*

*Return there-  
unto.*

*Issues returned  
upon every Vil-  
lage.*

**A** Writ issued out of the Chancery, dat. 13 Martii 7 Car. to the Sheriff of Glouc. commanding him per Sacramentum proborum & legalium hominum de Comd præd' to enquire Qui malefactores, & pacis Domini Regis perturbatores, apud Forestam Deane sepes & fossata Johannis Gibbons, ibidem per ipsum nuper levat noctanter, aut tali tempore quo factum eorum scire non credebant, prosternerunt, to the damage of the said John, & contra pacem: Et si præd' Johannes fecerit te securum de clamore suo prosequendo, tunc pone per vadios & salvos plegios, omnes illos quos culpabiles ibidem inveneris, quod sint coram nobis in quindena Paschæ, ubicunque, &c. ad respondendum tam nobis de pace fracta, quam præd' Johanni de transgressione, &c. The Sheriff ad quindena Paschæ returned the Inquisition; Quod virtute Brevis præd' ad inquirendum (reciting the Writ) per Sacramentum 12, &c. qui dicunt super Sacramentum suum, quod quidam malefactores, & pacis Regis perturbatores, vi & armis sepes (viz.) 769. partiarum sepium & fossarum ipsius Johannis Gibbons, apud Forestam de Deane, nuper ante per ipsum levat, prosternerunt; sed qui, aliquam partem inde prostraverunt Juratores præd' ignorant: Et similiter dicunt, quod vi armata & cum multitudine gentium, malefactores & pacis perturbatores præd' fuerunt: Ita quod nullus ad ipsos appropinquare ad ipsos cognoscend' ausus fuit, & tali tempore quo factum eorum sciri non credebant, sepes & fossata præd' prostraverunt & redierunt: And hereupon a Writ of Distringas issued, reciting the first Writ and the Inquisition thereupon returned, commanding the Sheriff of Gloucester, quod distringat propinquas villatas sepibus & fossatis præd' circumadjacent præd' sepes & fossata prostrata levare ad custodes suos proprios: And by the same Writ it was commanded to enquire quæ damna præd. Johannes Gibbons sustinuit, and to return the Writ and Inquisition in Octab. Trin. Whereupon the Sheriff certified, Quod Villa de Brettills & viginti aliarum Villarum, (naming them) in the County of Gloucester, sunt propinqua villata sepibus & fossatis inframentationis circumadjacentes, and further certified, Quod damnum in quadam Inquisitione brevi annexar eidem Johanni Gibbons propter brevitatem temporis restituere non potest; And returned Issues upon every of the said Villages, and that the residue of the Execution of the Writ appeared in quadam Inquisitione eidem brevi annexar, and returned the Inquisition, whereby was found that the said John Gibbons sustinuit damnum occasione præmissorum ad 200 l. And upon

*Mich. 8 Car.  
in B. R. Cro.  
Car. 280, 281.*

upon this Return Brampton Serjeant took divers Exceptions: First, *The Inquisition. Several Exceptions taken to it.* for the Forest of Deane, there is not any Parish named wherein it lies; Sed non allocatur, for a Forest is certain enough of it self. Secondly, because this Writ is founded upon the Statute of Westm. 2. cap. 46. That if the Lord hath right to improve any of his Waste, &c. and his Hedges be destroyed *noctanter*, and it cannot be known by the Verdict of the Assise or Jury, who those Malefactors were, the Towns next adjoining shall be distrained to levy the Hedge or Dyke at their own Costs, and to yield Damages. And he doth not shew here, that he is Lord of the Waste, and hath right to improve it: But Noy the King's Attorney, who devised the Writ, said, that it sufficeth in a Writ to shew the grief breviter, and if there be not any such person as may inclose, it ought to be shewn on the other side. *The Writ is only to shew the grief breviter.* Thirdly, it was objected, that this Inclosure is not shewn to be with the King's Licence, and then it is without warrant: But hereto was answered, that it ought to come in by Plea after Appearance and not by way of Exception: It was also moved by Noy, that they had no day in Court, because the Writ and the Inquisition were returned the last Term, and they then not appearing and pleading, they shall not be received to come in by way of Exception in this manner: And he shewed a Record Trin. 15 E. 1. Rot. 3. where such a Writ was awarded for one Nicolas de Stapleton, whose Hedges were cast down *noctanter*, and not being known by whom, had a Writ to distrain propinquas Villas to repair, and he said that was the President for this case; and he prayed a new Distringas might be awarded; & habuit.

The King against the Inhabitants of Epworth, Mich. 11 Car. Rot. 146. Cro. Car. 440.

Afterwards (viz.) Mich. 11 Car. Rot. 146. upon the like occasion a Writ was granted in the case of the King, and the like Inquisition returned, and the Exceptions taken to the Writ and Return: viz. *Exceptions taken to it.* First, That the Writ was not well granted; for it appears by the Writ and Inquisition, that the Prostration began the first day of May, 10 Car. and continued till the first day of June, 11 Car. so that it was but a short time (viz. five days) before the Writ brought, which ought not to be, but there ought to be so long distance as the Country may have a convenient time to enquire, which ought to be a year; and so it was held in 12 Jac. Secondly, it doth not appear that this Prostration was of any Fences, &c. of the Common which was improved. *Exception.* Thirdly, that the Writ doth not make any mention, that the Malefactors were not indicted. But Sir Jo. Banks the King's Attorney, answered to the first, That he had seen the Resolution of 12 Jac. and it was not that there should be a year to indict the Offenders, but there ought to be a convenient time, and that the Court shall adjudge whether the time were convenient. *Exception.* To the second, that the Statute doth not only extend to the Prostration of Inclosures to be improved out of the Common, but to all Inclosures; and it is for the Benefit and Peace of the Commonwealth, and shall be expounded most favourably for the King, and benefit of the Commonwealth: And if it extends only to the Improvement of Commons, it ought to have been pleaded, that this Inclosure was not any parcel of the Common improved. *The Answer to the first.* To the third, that the Defendant should have pleaded, if any of the Offenders had been indicted: Et adjournatur. Vide the Statute of Westm. 2. cap. 46. upon which this Writ is grounded. *To the second.* *To the third.*

W. 2. cap. 46.

## C A P. V.

What the Sheriff is to do about Distresses, Fines, High-way-men, Informations, Jurors, Juries, Returns of Parliament-Men and Writs of Partition by the Statutes of *W. & M.* and King *W. 3.* to the last Session of Parliament.

## Distresses.

Washington's  
Abridg. Stat.  
2 *W. & M.*  
cap. 5. Sect.  
1, 2, 3, 4.

**S**Tat. 2 *W. & M.* Sess. 1. cap. 5. After the first day of June, 1690. where *Distresses.*  
any Goods or Chattels shall be distrained for Rent reserved and due upon any Demise, Lease or Contract, and the Tenant or Owner of the Goods, shall not within five days after such Distress and Notice thereof (with the cause of such taking) left at the Parson-house, or other most notorious place of the Premises charged with the Rent, replevy the same, the person distraining may with the Sheriff or Under-sheriff of the County, or with the Constable of the Hundred, Parish or place where, &c. who are hereby required to assist, cause the Distress to be appraised by two sworn Appraisers (whom such Sheriff, &c. shall swear to appraise them truly, according to the best of their understanding) and after such Appraisalment may sell the same towards the satisfaction of the Rent, and the Charges of the Distress and Appraisalment, leaving the Overplus, if any be, in the hands of the said Sheriff, &c. for the Owners Use.

It shall be lawful to distrain for Rent arrear, as aforesaid, any Sheaves or Cocks of Corn, or Corn loose or in the Straw, or Hay in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise; and to lock up and detain the same in the place where it shall be found, till it be replevied, as aforesaid; and in default thereof, within the time aforesaid, to sell the same after Appraisalment, as aforesaid; so nevertheless that it be not removed to the damage of the Owner, but kept where it shall be found and seized, as impounded, till it be replevied or sold.

Upon any Pound-breach or Kelsous of Goods distrain'd for Rent, the person grieved shall have a special Action upon the Case, and recover treble Damages and Costs of Suit against the Offenders, or against the Owners of the Goods, if they come to his use or possession.

If any such Distress and Sale, as aforesaid, shall be made, where there is no Rent due, the Owner of the Goods distrained may by Action of Trespass, or upon the Case, against the persons distraining, recover double the value of the Goods distrained, with full Costs of Suit.

## Fines.

Washington's  
Abr. Stat. 4  
& 5 *W. & M.*  
cap. 24. Sect.  
3, 4.

Stat. 4 & 5 *W. & M.* cap. 24. An Act made in the 22th and 23th *Fines.*  
years of the Reign of the same King, Entituled, An Act for the better and more certain recovery of Fines and Forfeitures due to his Majesty, shall be in force, and is hereby made perpetual.

All Officers to whom it belongeth to make Returns of Estreats into the Court of Exchequer, shall upon the delivery in of all and every such Estreat and Estreats take this Oath, viz.

You shall swear that these Estreats now by you delivered, are truly and carefully made up and examined, and that all Fines, Issues, Amerciaments, Recognizances and Forfeitures, which were Set, Lost, Imposed or Forfeited, and in right and due course of Law ought to be estreated into the Court of Exchequer,

Exchequer, are to the best of your Knowledge and Understanding therein contained : And that in the same Estreats are also contained and expressed all such Fines as have been paid into the Court from which said Estreats are made, without any wilful or fraudulent Discharge, Omission, Misdemeanour or Defect whatsoever.

So help you God.

Which Oath any of the Barons of the Exchequer may administer.

### High-way-Men.

Washington's  
Abr. Stat. 4  
& 5 W. & M.  
cap. 8. Sect.  
1, 2, 3, 4.

Stat. 4 & 5 W. & M. cap. 8. Every person who shall apprehend one *High-way-Man*, or more *Highway-men*, and prosecute them till they be convicted, shall have from the Sheriff of the County, where such Conviction shall be, without paying any Fee 40 l. within a month after such Conviction, and Demand thereof made, by Certificate under the Judges Hand, before whom such Conviction shall be ; and if any Dispute arise between the persons apprehending such Felons, touching their Right to the said Reward, the Judges certifying, shall in their Certificate direct the Reward to be paid amongst them in such proportion, as they shall think reasonable : And if any such Sheriff shall die or be removed before the end of the Month, the Reward being unpaid, the succeeding Sheriff shall pay it within a Month after Demand and Certificate as aforesaid. The Sheriff in case of Default of payment, shall forfeit double the Sum he ought to pay, to the persons to whom the Reward is due, to be recovered by Action of Debt, Bill, Plaint or Information, &c. with treble Costs of Suit.

If any person shall happen to be killed by such *High-way-man*, endeavouring to apprehend him, his Executors or Administrators upon Certificate under Hand and Seal of a Judge of Assize for the County, (or of two next Justices of Peace) shall receive the said Sum of 40 l. and in failure of payment, shall recover double the Sum, with treble Costs of Suit as aforesaid.

The Sheriffs to be allowed the said Sums of 40 l. upon their Accounts without Fee or Reward.

If upon the Account of any Sheriff, there shall not be sufficient in his Hands to reimburse him, the same shall be paid by the Commissioners of the Treasury out of the Revenue of the Crown, upon Certificate from the Clerk of the Pipe.

### Informations.

Washington's  
Abr. Stat. 4  
& 5 W. & M.  
cap. 18. Sect.  
1, 2, 3, 4.

Stat. 4 & 5 W. & M. cap. 18. The Clerk of the Crown of the Kings-Bench, shall not without express order in open Court, receive or file any Information for Trespasses, Batteries and other Misdemeanours ; or issue any Process thereupon, before he shall have taken, or shall have delivered to him a Recognizance from the Informer, with the place of his Abode, Title or Profession, to be entered to the person prosecuted, in 20 l. penalty, to prosecute with effect, and abide by such Order as the Court shall direct ; which Recognizance the Clerk of the Crown, or a Justice of Peace of the place, where the Cause of any such Information shall arise, may take, and the Clerk of the Crown shall enter the same upon Record, and file a Memorandum thereof in some publick place in his Office, that all persons may resort thereunto without Fee. And if the persons against whom such Informations shall be exhibited, appear and plead to Issue, and that the Prosecutor shall not at his own Charge, within a year after Issue joined, procure a Trial ; or if upon such Trial a Verdict pass for the Defendant, or

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the Informer procure a Noli prosequi to be entered, the Court shall award the Defendant Costs, unless the Judge before whom it shall be tried, shall at the Trial in open Court certify upon Record, that there was a reasonable cause for such Information. And in case the Costs be not paid within three Months after they are taxed, the Defendants shall have the benefit of the said Recognizance to compel the payment thereof.

No persons who are or shall be outlawed in the said Court for any thing (except Treason or Felony) shall be compelled to appear in person to reverse the same, but may appear in person to reverse the same without Bail, except where special Bail shall be ordered by the Court.

And if any person so outlawed be taken upon a Capias Utlagatum the Sheriff who hath taken him (in all Cases where special Bail is not required by the said Court) may take an Attornies Engagement under his Hand to appear for him, and to reverse the Outlawry, and thereupon may discharge the Defendant; and where special Bail is required the Sheriff may take Security of the Defendant by Bond with one or more Sureties, in double the Sum for which special Bail is required, and no more, for his appearance at the Return of the Writ, and to do and perform such things as shall be required by the Court, and after such Bond taken, may discharge him.

If any person so outlawed and taken upon a Capias Utlagatum, shall not be able with the return of the said Writ, to give Security, whosoever such Prisoner shall find Surety for his appearance by Attorney at some Return in the Term then next following, to reverse the Outlawry, &c. the Sheriff may discharge him.

## Jurors.

Washington's  
Abr. Stat. 4  
& 5 W. & M.  
cap. 24. sect.  
17, 18.

Stat. 4 & 5 W. & M. cap. 24. All Jurors (other than Strangers upon Tryals per medietatem Linguae) return'd upon Tryal of Issue join'd in the King's-Bench, Common-Pleas or Exchequer, or before Justices of Assize or Nisi Prius, Oyer and Terminer, Gaol-delivery, or General Quarter-Sessions of the Peace after the first day of May, 1693. within any County of England, shall have in their own Name, or in Trust for them within the same County, 10 l. a year at least, above Repettes, of Freehold or Copyhold Lands, or of Lands in ancient Demesne, or in Rents, in Fee-simple or Fee-tail, or for their own, or some other persons Life. And in every County of Wales such Juror shall have 6 l. a year at least, as aforesaid. All which persons having such Estates, are hereby made liable to serve, as aforesaid. If any be returned of lesser Estate, it shall be good cause of Challenge, and the party returned shall be discharged upon such Challenge, or upon his own Oath. Nor shall any Jury-men Issues, making default, be saved, but by special Order of the Court or Judges, for some reasonable Cause proved upon Oath: And the Ven. fac. for impannelling Juries in England, shall run thus; viz.

Rex, &c. præcipimus, &c. quod Ven. fac. coram, &c. duodecim liberos & legales homines de vicineto de A. quorum quilibet habeat decem librat. terræ, tenementor. vel reddit. per annum ad minus, per quos, &c. & qui nec, &c.

And the residue after the ancient manner. And the Writs for returning Juries in Wales, shall be in like manner, altering only the Word decem for sex. And Sheriffs, Coroners and other Ministers returning in any such Pannel any person, not having 10 or 6 l. respectively by the year as aforesaid, shall forfeit for every such person so returned, the Sum of five pounds to their Majestys.

So Sheriff or Bailiff of any Liberty, or their Ministers, shall return any such persons to have been summoned by them, unless they shall have been summoned six days at least before the day on which they ought to make their Appearance; nor shall take any reward to excuse the Appearance of any Juroz summoned or returned, on pain to forfeit for every such Offence 10 l. to their Majesties.

## Juries.

Walshington's  
Abr. Stat. 7  
& 8 W. 3.  
cap. 32. sect.  
1. to 13.

Stat. 7 & 8 W. 3. cap. 32. If at any time hereafter, any Plaintiff or Demandant being at Issue, shall bring to the Sheriff any Writ of Venire Facias, upon which a Writ of Habeas Corpora or Distringas with a Nisi Prius Issue, in order to try such Issue at the Assizes, and such Plaintiff or Demandant shall not proceed to Trial at the first Assizes after the Teste of such Habeas Corpora: In all such cases (other than where Writs by Juroz shall be directed) the Plaintiff or Demandant, when he shall think fit to try the said Issue at any other Assizes, shall sue forth a new Writ of Venire directed to the Sheriff in this Form:

Quod de novo Venire facias, coram, &c. duodecim liberos & legales homines de Vicineto de A. quorum quilibet habeat decem libras terræ, tene-mentor vel redditum per Annum ad minus, per quos, &c. & qui nec, &c.

The Residue after the ancient manner. Which Writ being returned and filed, a Habeas Corpora or Distringas with a Nisi Prius shall issue thereupon, whereupon the Plaintiff or Demandant may proceed to Trial, and so toties quoties, as the Case shall require. So also where the Defendant or Tenant shall be minded to bring the Cause to Trial by Proviso.

Every Writ of Venire, Habeas Corpora or Distringas, with a Nisi Prius, sued out according to this Statute, shall be good and warrantable by Law, and not Erroneous or assignable for Error.

Where there shall be occasion for a Tales by virtue of the Statute, the Sheriff or other Minister to whom it shall appertain to return the Tales-Men, shall return Free-holders or Copy-holders of the County where the Cause is to be tried, who shall be returned upon some other Pannel to serve at the same Assizes, and then attending, to serve upon such Tales; and the Plaintiff or Defendant may have his Challenge to the Juroz so named, in such wise as if they had been impannelled upon the Venire: And the Judge of Assize shall and may proceed to try the Issue with these Tales-Men so newly added by virtue of this Act, as he might have done if all the Juroz returned on the Venire had appeared. And every such Trial, after the 24th of June, 1696. shall be good in Law: And in case any Free-holder or Copy-holder so returned on the Tales, being present at such Return, shall refuse to appear when called, or after Appearance shall wilfully withdraw himself, the Judge of Assize, who awarded such Tales, shall and may fine him.

All Constables and Headboroughs of Towns in each County, shall yearly at the General Quarter Sessions of the Peace, in the Week after the Feast of St. Michael, return and give a true List in Writing of the Names and Abodes of all persons within the respective places for which they serve, qualified to serve on Juries between the Age of 21 and 70 years, which List they shall deliver to the Justices, and they shall cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff of the County or his Deputy, on or before the first of January next following, and cause the said List to be fairly entered in a Book, and kept among the Records of the Sessions. And no Sheriff shall impanel or return any person to serve in any Jury at the Assizes,

Caol-delivery or Sessions of Peace, that shall not be named in the said List. Constable or Headborough, failing to make such Return as aforesaid, shall forfeit the penalty of 5 l. to the King.

Every Summons of persons qualified to serve on Juries, shall be made by the Sheriff or his Officer, at least six days before, shewing to the person the Warrant under Seal of the Office, wherein he is nominated to serve; and in case such Juroz to be summoned be absent from his usual Habitation, a Note in Writing under the Hand of such Officer to that effect shall be left at his Dwelling-House, with some person there inhabiting.

The Return to the Justices shall be a good excuse for the Sheriff, if he summons one who is not qualified, and if any Action be brought thereupon, the Sheriff may plead the General Issue, and give this Act in Evidence, and if the Plaintiff be nonsuited, discontinue his Action, or a Verdict for the Defendant, the Plaintiff shall pay treble Costs. And if the Sheriff, his Deputy or Bailiff shall summon any Freeholder or Copyholder, otherwise than aforesaid, or neglect his or their Duty, or excuse any person for Favour or Reward, or allow of any Exemption to any person under the Age of 70 years, such Sheriff, his Deputy or Bailiff, shall forfeit the Sum of 20 l. to such party grieved, or who else shall sue for the same, in any Court of Record at Westminster.

After the 24th of June, 1696. none shall be returned to serve on any Jury at the Assizes, Caol-delivery, or Sessions of the Peace for the County of York (the City of York, and Town of Kingston upon Hull, excepted) above once in four years; and every Sheriff of the said County for the time being, shall keep a Register of such persons as have served on Juries, wherein their Abodes, and Times of Service shall be alphabetically entered, which Book shall be from time to time delivered over to the succeeding Sheriff, within ten days after he shall be sworn. And every Jurymen having served at the Assizes, Caol-delivery or Sessions, may repair to the Sheriff or Under-Sheriff, to have his Name entered in the said Register, of which he shall, upon request, have a Certificate gratis.

From henceforth, only one Pannel, consisting of 48 Freeholders and Copyholders, and no more (each person having 80 l. Land per annum) shall be returned to serve on the Grand Inquest, and no more than 10 Pannels of 24 Jurozs in each, shall be returned in Civil Causes at any Assizes for the County of York, (except only where special Juries are directed by Rule of Court;) And at no Sessions of Peace for the said County, or any of the Ridings within the same, shall be returned above 40 persons to serve either upon the Grand Inquest, or otherwise.

From henceforth the Inhabitants of the City of Westminster shall be exempted from serving in any Jury at the Sessions of the Peace for the County of Middlesex.

The Act of 4 & 5 W. & M. cap. 24. as to so much thereof as relates to the returning of Jurozs, shall be in force for seven years, from the first day of May, 1696. and from thence to the end of the next Sessions of Parliament.

This Act, or the last mentioned Act, shall not give or require any longer time for the summoning Juries that are to try Issues joined, and triable in London, or County of Middlesex, than was by Law required before, nor any longer time for the return of any Writ, Precept or Process of Venire Facias, Habeas Corpora, or Distringas, than was by Law required before.

Continuation,  
Stat. 8 & 9  
W. 3. cap. 10.  
sect. 1.

Stat. 8 & 9 W. 3. cap. 10. It shall be lawful at any time before the first of November 1697. for all Sheriffs or Coronors of Counties where Lists have not been returned, pursuant to the Act made the first Sessions of this present Parliament, Entituled, An Act for the ease of Jurors, and better Regulating of Juries, to make Returns of Jurors in all Cases, as they might have done before the making of the said Act. And from and after the Feast of St. Michael, 1697. all Justices of the Peace are required and commanded at their Sessions of the Peace next before the Feast of St. Michael yearly, to issue fourth Precepts to the respective Constables within their respective Counties or Divisions, requiring them to make such Return of Persons to serve upon Juries, as by the said Act is directed.

Returns of Parliament Men.

Washington's  
Abr. Stat. 7  
& 8 W. 3.  
cap. 7. sect.  
13, 14.

Stat. 7 & 8 W. 3. cap. 7. All false Returns wilfully made of any Knight of the Shire, Citizen, Burgess, Baron of the Cinque-Ports, or other member to serve in Parliament are against Law, and hereby prohibited; and if any person shall return a Member to serve in Parliament, contrary to the last determination in the House of Commons of the right of Election for such place, the Return so made shall, and is hereby adjudged to be a false Return. And the Party grieved (viz. the Party duly elected) by such false Return, may sue the Officers and Persons making or procuring the same, or any of them at his Election, in any Court of Record at Westminster, and shall recover double damages with Costs of Suit.

Returns of Par-  
liament-Men.

If any Officer shall wilfully, falsely and maliciously return more persons than are required to be chosen by the Writ or Precept, the like remedy may be had against him and the party or parties that procure the same, or any of them by the party grieved.

Stat. 7 & 8  
W. 3. cap. 25.  
sect. 24, 25, 26,  
27, 28, 32.

Stat. 7 & 8 W. 3. cap. 25. Upon every Election of Knights of the Shire, the Sheriff of the County shall hold his County Court for the same Election, at the most publick and usual place in the County, where the same hath most usually been for forty years last past, and there proceed to Election at the next County Court, unless the same fall out to be within six days after the receipt of the Writ, or upon the same day, then he shall adjourn the same Court to some convenient day, giving ten days notice of the time and place of the Election.

In case the Election be not determined upon the View, but a Poll required, then the Sheriff, or in his absence, his Under-Sheriff shall forthwith proceed to take the said Poll. And the said Sheriff, or in his absence his Under-Sheriff, or such as he shall depute, shall appoint such number of Clerks, as to him shall seem meet for taking thereof, who shall all take the said Poll in the presence of the said Sheriff, or Under-Sheriff, or such as he shall depute. Before they begin, every Clerk so appointed, shall by the said Sheriff or Under-Sheriff be sworn truly and indifferently to take the said Poll, and set down the Names of each Freeholder, the place of his Freehold, and for whom he polls, and to poll no Freeholder who is not sworn, if so required by the Candidates or any of them; And the Sheriff, or Under-Sheriff shall appoint such persons as shall be nominated by each Candidate to be Inspectors of every Clerk. And every Freeholder before he be admitted to poll, if required by any of the Candidates, shall take the following Oath (to be administered by the Sheriff, Under-Sheriff or sworn Clerk.)

You

You shall swear that you are a Freeholder for the County of \_\_\_\_\_ and have Freehold Lands or Tenements of the yearly value of 40 s. lying at \_\_\_\_\_ within the said County of \_\_\_\_\_ and that you have not been before polled at this Election.

In case any person taking the said Oath shall thereby commit Perjury, and be thereof convicted, or if any person suborn any person to take the said Oath, whereby he shall commit Perjury, and be thereof convicted, he and they shall incur the pains and penalties enacted in the Act made 5 Eliz. cap. 9.

The Sheriff, or in his absence, the Under-Sheriff as aforesaid, shall at the same place of Election proceed to the polling of the Freeholders then and there present, and shall not adjourn the County Court then and there held, to any other Town or place within the same County, without the consent of the Candidates, nor shall by any unnecessary Adjournment delay the Election, but proceed from day to day in taking the Poll, till the Freehold then and there present shall be all polled, and no longer.

Every Sheriff, Mayor, Bailiff or other Officer to whom the Execution of any Writ or Precept shall belong for electing Members of Parliament, shall forthwith deliver to such person or persons as shall desire it, a Copy of the Poll taken at such Election, paying reasonably for writing the same; and every such Officer as abovesaid, for every wilful Offence contrary to this Act, shall forfeit to every party aggrieved the Sum of 500 l. to be recovered by him or them, his or their Executors or Administrators, with full Costs of Suit for which he or they may sue by Action of Debt, Bill, Plaint, &c. in any of the King's Courts at Westminster, wherein no Escoin, &c. shall be allowed.

The Sheriff of the County of Southampton shall at the request of one or more of the Candidates for that County, adjourn the Poll from Winchester, after every Freeholder then and there present is polled, to Newport in the Isle Wight, for the Case of the Inhabitants of that Island, any thing in this Act to the contrary notwithstanding.

#### Writs of Partition.

*Writs of Partition.*

Stat. 8 & 9 W. 3. cap. 31. When the High-Sheriff cannot conveniently be present at the Execution of any Judgment in Partition, the Under-Sheriff in presence of two Justices of Peace of the County, may proceed to the Execution of the same, by Inquisition in due form of Law, and the High-Sheriff shall make the same Return as if he were personally present: After Partition made, returned and filed, the Under-tenants shall continue in their Tenancies, as before they were divided and set out to the respective Landlords, under the same Rents and Covenants, &c. so also where any Demandant is Tenant in actual Possession to the Tenant to the Action for his part and proportion, or any part thereof. Stat. 8 & 9 W. 3. cap. 25. Sect. 4, 5.

The respective Sheriffs, Under-Sheriffs and Deputies, and Justices of Peace (in case of Disability in the High-Sheriff) shall give due attendance to the executing of such Writ of Possession, or every of them to pay the Demandant Costs and Damages not exceeding five pounds; for which the Demandant may bring his Action in any of the King's Courts at Westminster, wherein no Escoin, &c. In case the Demandant shall not pay the Sheriffs, &c. such Fees as they demand the Court shall award what each person shall receive.

## C A P. VI.

## Retorns of Writs.

## S E C T. I.

*Midd. ff.*

**I**Nquisitio indentat' cap<sup>t</sup> apud *U.* in Comitāt' prædict' decimo septimo die *Junii*, Anno Regni Domini *Caroli* secundi nunc Regis *Angliæ*, &c. decimo nono coram me *C. P. Armigero*, Vic' Com<sup>is</sup> prædict' virtute brevis Domini Regis mihi direct. & huic Inquisitioni annexat' per Sacramentum *A. B. C. D.* &c. proborum & legalium hominum de Balliva mea, qui onerat' & jurat' existend' dicunt super Sacramentum suum, quod *W. R.* in dicto brevi huic Inquisitioni annexat' nominat' die captionis hujus Inquisitionis possessionatus fuit, de bonis & catallis sequen. ut de bonis & catallis suis propriis, videlicet, de vigint. Vaccis, precii decem librarum, & de vigint. Ovibus, precii decem solidorum, quas ego præfat. Vic. prædict. *R. O.* liberari feci tenend' sibi bona & catalla prædicta ut bona & catalla sua propria, in parte satisfactionis debiti & dampnorum suorum prædictorum in brevi præd' mentionat'. Et ulterius Jur' prædict' super Sacramentum suum prædictum similiter dicunt, quod prædictus *W. R.* tempore redditionis judicii prædicti, scilicet in prædict. Octab. Sancti Hillarii seisit fuit in dominico suo ut de feodo, de & in uno capitali Messuagio, una domo portal. (Anglice a *Gate-house*) duobus horreis, & duobus stabulis, cum pertinentiis, & tribus Gardinis, & tribus Pomariis, eidem capitali Messuagio adjungend'. Ac etiam de & in quinquaginta acris terræ arabilis & pasturæ, aut eo circiter, prox. prædict' capitali Messuagio jacen' & adinde pertinent' clari annui valoris in omnibus exitibus ultra reprimas quatuordecim librarum & decem solidorum. Ac etiam de & in quinquaginta acris prati, aut eo circiter, prædict' capitali Messuagio similiter pertinent. clari annui valoris in omnibus exitibus ultra reprimas viginti & quinque librarum. Ac etiam de & in viginti acris bosci, aut eo circiter, prædict. capitali Messuagio pertinent. clari annui valoris in omnibus exitibus ultra reprimas quinque librarum. Ac de & in octoginta acris terræ arabilis & pasturæ, aut eo circiter, prædict' capitali Messuagio pertinent. clari annui valoris in omnibus ultra reprimas quadraginta & quinque librarum, & decem solidorum; quæ quidem præmissa sunt situat' jacen' & existend' in Parochia de *L.* in dicto Com<sup>is</sup> *M.* & modo sunt in tenura sive occupatione prædict' *W. R.* sive Assignatorum suorum. Ac etiam de & in uno alio Messuagio, ac diversis aliis parcellis terræ arabilis, prati & pasturæ, eidem Messuagio pertinent' continen' per æstimationem sexaginta & tres acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra reprimas

*Return of an Inquisition upon an Elegit.**As well for Goods as Lands.*

prisas decem librarum, situat, jacent & existend in Parochia de L. prædict. & modo in tenura sive occupatione prædicti W. R. sive Assignatorum suorum. Ac etiam de & in uno alio Messuagio, & de diversis aliis parcellis terræ arabilis, prati & pasturæ, eidem Messuagio pertinenti continend per æstimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra reprisas sex librarum, & situat, jacent & existend in Parochia de I. in Com. prædict. modo in tenura sive occupatione S. W. Ac de & in uno alio Messuagio, & diversis aliis parcellis terræ arabilis, prati & pastur. eidem Messuagio pertinent. continen. per æstimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra reprisas sex solidorum & octo denar situat, jacent & existend in Parochia de L. prædicti & modo in tenura & occupatione J. B. Ac de & in duabus aliis parcellis terræ arabilis & pastur continend per æstimationem novem acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra reprisas tresdecim solidorum & quatuor denar situat & jacent in Parochia de L. prædict. modo in tenura P. T. Ac etiam de & in tribus aliis parcellis terræ arabilis & bruer. continend per æstimationem viginti acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra reprisas quadraginta solidorum, situat, jacent & existend in Parochia de G. in Com. M. prædicti & modo in tenura sive occupatione W. M. Et Jur. prædict. super Sacramentum suum prædictum ulterius dicunt, quod prædicti capitale Messuagium, prædict. domus portal. (Anglice a Gatehouse) prædicti duo horrea, & prædict. duo stabula cum pertinentiis prædict. tria Gardina, & prædicti tria pomaria adinde pertinent & prædicti quinquaginti acr terræ arabilis & pastur, aut eo circiter, prox. prædicti capitali Messuagio jacent & adinde pertinent & prædicti quinquaginti acr prati prædicti capitali Messuagio similiter spectant & prædicti viginti acr bosci, una cum prædict. Messuagio & prædicti diversis parcellis terræ arabilis, prati & pasturæ continend per æstimationem sexaginti & tres acras, aut eo circiter, sunt vera & æqualis medietas omnium & singulorum terrarum, tenementorum & hereditamentorum quorumcunque in Com. M. prædicti prædicti W. R. in dicto brevi nominat quam quidem medietatē ego prædicti Vic. prædicti die captionis hujus Inquisitionis, prædicti R. O. Gen. in dicto brevi nominat ad rationabile precium & extent. liberari feci, tenend. sibi & Assignatis suis ut liberum tenementum suum juxta formam Statuti inde editi & provis. quousque relid. debiti & dampnorum prædicti in brevi prædicti specificat inde levaverit prout breve prædicti in se exigit & requirit: Et ulterius Jur. prædicti super Sacramentum prædicti dicunt, quod prædicti W. R. in brevi prædicti nominat. tempore redditionis judicii prædicti in dicto brevi specificat non habuit, nec die captionis hujus Inquisitionis aliqua alia sive plura habet bona seu catalla, terras seu tenementa in Com. prædicti ad notitiam Jur. prædicti. In cujus rei testimonium, tam ego præfatus Vic. quam Jur. prædicti huic Inquisitioni singula nostra alternatim apposuimus, die, anno & loco subdictis.

C. P. Ar. Vic.

*The words of  
the Writ must  
be pursued.*

**Note, That in all Returns of this or any other nature, the words of the Writ ought to be pursued.**

*The Sheriff must  
deliver just a  
Moety.*

**Note also, the Sheriff must be sure, after the Jury have found the parcels and appraised them, to deliver to the Plaintiff just a Moety, according to the appraisment of the Jury, and no more, for if he returns more or less, the Return is void.**

Inquisitio

*Medd. ff.*

Inquisitio indentat. capta apud S. in Comitatu præd' (tali die & anno) coram me R. E. Barr' Vic' Com' præd' virtute Brevis Domini Regis mihi direct' & huic inquisitioni annex. A. R. M. B. & ceter. terr. tenement' in brevi præd. mentionat' cum pertinentiis per me inde præmunis' existend' si interesse voluerint per sacramentum F. B. Gen' (& ceter. jur') qui jurat' & onerat' existend' dicunt super sacramentum suum, quod unum molendinum aquaticum cum pertinentiis communiter vocat' *Home Milne*, & sex ac'r prati & pasturæ eidem molendino aquatico vocat' *Home Milne* spectand' sive pertind' situat' jacent' & existend' in Parochia de W. & G. in Com. præd. seu in earum una & in brevi præd. mentionat' ac modo vel nuper in tenura sive occupatione cujusdam J. C. vel Assignatorum suorum in eodem brevi nominat'. sunt clari annui valoris in omnibus exitibus ultra reprimas decem librarum, &c. (and so set out all the particulars) Quam quidem medietatem scilicet præd. molendinum aquaticum vocat' *Home Milne* & cetera præmissa præd. in ista inquisitione præmentionat' cum pertinentiis ego præfat' Vic' postea scilicet (tali die) præd. A. R. M. B. &c. terr. tenend' præd' per me inde præmunis' existend' si interesse voluerint) liberari feci E. B. Vid. in eodem brevi similiter nominat' (per T. S. Gen. ejus in hac parte certum Attornatum sive Assign' legitime constitut.) tenend. medietatem præd' cum pertinentiis lib' præfat' E. B. & Assign' suis ut liberum tenementum suum quousque trescent' lib' bonæ & legalis monete Angliæ plenar' fuerint inde levat. juxta exigentiam ejusdem brevis ac prout per idem breve mihi præcipitur. In cujus rei testimonium, &c.

Inquisitio super breve de Elegit. extra Canc. super recogn.

Le Moiety set out.

Terr-Tenentes preminuit. Deliberat. per Vic. Attorn. quar. loco quar.

R. E. Barr' Vic'.

Executio istius brevis patet in quadam inquisitione huic brevi annex.

The Form of a Return by the new Sheriff, when the Writ was executed by the old Sheriff.

R. E. Barr' Vic'.

Istud breve sic indors. mihi deliberat' fuit per præfat' R. E. Barr' nuper Vic' Com' mei M. in ejus exit. ab officio suo.

R. H. Ar' modo Vic'.

*Medd. ff.*

Inquisitio indentat' capta apud M. in Com' præd. (tali die & anno) coram me W. W. Baronet. Vic' Com' præd' virtute brevis Domini Regis de diem clausit extremum mihi direct' & huic inquisitioni annex. per sacramentum I. P. &c. proborum & legalium hominum de balliva mea, qui onerat' & jurat' existend' dicunt super sacramentum suum, quod J. B. in præd' brevi nominatus, obiit apud H. in Com' præd' circa tres menses jam ult' elapsi. ante diem captionis hujus Inquisitionis, & tempore mortis suæ seifitus fuit in dominico suo ut de feodo, de & in uno messuagio cum area & pomar' eidem spectand' & pertinen' cum suis pertinentiis situat' jacent' & existend' in Parochia de H. in Com' præd. modo vel nuper in tenura sive occupatione cujusdam T. C. vel Assignatorum suorum clari annui valoris in omnibus exitibus ultra reprimas viginti solid. ac etiam jur' præd. super sacramentum suum præd' similiter dicunt quod præd' J. B. possessio- natus fuit ut de bonis & catallis suis propriis, de & in una dimissione, pro termino tresdecim annorum tunc ventur' & inextirpat' sibi præfat' Johanni in vita sua, per quendam P. Gen' per indenturam fact. & sigillat' de

Inquisitio super breve de diem clausit extremum.

Obiit seifite.

Possession of a Lease for years found.

23 b b b

&

*The value thereof.*

*Possession of Household Goods found and annexed in a Schedule.*

*An Obligation found.*

*Ad manus Executricis deven.*

*In manus Domini Regis capi & seisciri feci.*

*Nulla alia terr. tenementa, bona, seu catalla, &c.*

& in uno messuagio, cum areis, gardinis, & pomariis, eidem spectant & pertinent situat & existend in Parochia de H. præd. nuper in occupatione præfat J. B. vel Assignatorum suorum, & modo in occupatione E. B. Viduæ nuper uxoris ejus vel Assignatorum suorum, ac una parcella sive clauso terræ cum pertinentiis jacent & existend in præd Parochia de H. præd continend per æstimationem tres acras, sive plus sive minus, dicto Messuagio ult recitat spectant sive pertinent modo vel nuper in occupatione præfat E. B. Vid. vel Assignatorum suorum, quæ quidem dimissio dicti Messuagii & præmiss. ult recitat ac terminis stat & interesse, de quibus idem J. B. præd tempore mortis suæ sic ut præfertur possessionatus fuit, valent ad vendend decem libras legalis monetæ Angliæ ultra omnes redditus & reprisas & ulterius Jur præd. similiter dicunt super sacramentum suum præd J. B. tempore mortis suæ, possessionat fuit ut de bonis catallis & utensiliis, (Anglice *Household-stuff*) cum pertinentiis particulariter mentionat & expref. in Inventorio sive Scheda indentat & dicto brevi huic Inquisitioni annex. ac per Jur præd. appreciat ad separales summas, & valor. in eodem Inventorio sive Scheda similiter specificat & quæ in toto attingunt, ad summam viginti & quatuor librarum, quæ quidem bona, catalla & utensilia, sunt jacent & existend in & circa præd Messuagium & areas in H. præd. in occupatione præfat E. B. & insuper Jur prædict super sacramentum suum præd similiter dicunt quod quidam T. de H. prædict Grocer & S. S. de M. in dicto Comitatu Middlesex. Clericus, per scriptum suum obligatorium, gerend dat ante diem mortis præd J. B. devenit obligat præfato J. B. in vita sua, in summa viginti & quatuor librarum legalis monetæ Angliæ solvend præfato J. B. ad certum diem jam præteritum ac Juratores prædicti super sacramentum suum prædictum similiter dicunt quod prædict. bona, catalla, utensilia ac Indentura & Scriptum obligatorium præmentionat post mortem præd. J. B. ad manus & possessionem præfat E. B. uxoris ejus, & Executricis devenerunt & in manibus suis jam existunt, quæ omnia & singula Messuagii dimissionem, bona, catalla, utensilia & cætera præmissa præmentionat cum pertinentiis unacum præd. Indentur scripte obligator ac præd. debet viginti & quatuor librarum in eodem scripto obligat mentionat ego præfat Vic dicto die captionis hujus Inquisitionis, in manus dicti Domini Regis, capi & seisciri feci, juxta exigent brevis prædict ac prout per idem breve mihi præcipit: Iidemque Juratores præd. similiter dicunt super sacramentum suum præd quod prædict J. B. (tali die & anno) in brevi præd mentionat quo die debitor dicto Domino Regi devenit, seu unquam postea, nulla alia sive plur habuit terr tenementa sive hæreditamenta in dicta Balliva mea, neque die quo obiit, habuit aut possessionat fuit, de aliquibus aliis, sive plur bonis, catallis, debet, credit seu specialitat in Balliva mea, ad noticiæ Jur prædict seu eorum alicujus, quæ extend. aut appreciari possunt. In cujus rei, &c.

W. W. Barr Vic

*Midd. ff.*  
Inquisitio super breve de extend fac. pro Dno. Rege in auxilium D.H. verf. J.W. Ar. Debitor. Dno. Regi devenit.

Inquisitio indentat caput apud S. in Comitatu prædicto (tali die & anno) coram me M. L. Armiger Vic Comd prædict virtute brevis dicti Domini Regis mihi direct & huic Inquisitioni annex. per Sacramentum W. C. &c. proborum & legalium hominum de Comitatu meo prædicto qui jurat & onerat existend dicunt super Sacramentum suum, quod I. W. Armiger in brevi præd nominat (tali die) quo die debitor dicto Domino Regi primo devenit, seiscitus fuit, & die captionis hujus Inquisitionis seiscitus existit in dominico suo ut de feodo taliat in reversione cum

cum acciderit, scilicet post mortem A. Domine Vidue, matris ejus, de & in reversione tertie partis indivis. Manerii vocat B. titulat & existend in Parochia de M. in dicto Comitatu Middlesex. in tres partes dividend cum omnibus & singulis juribus, membris, reddit' servitiis & pertinentiis quibuscunque, eidem Manerio spectand sive pertinen modo vel nuper in tenura sive occupatione prestat A. Domine W. assignatorum suorum; ac etiam in reversione cum accid' scilicet post mortem prestat A. Domine W. Vidue de & in tertia parte indivis. (in tres partes similiter dividend') omnium & singulorum terr tenementorum & hereditamentorum eidem Manerio spectand sive pertinen cum pertinentiis aut cum eodem modo vel nuper ulitat sive occupat ut pars, parcelle sive membre ejusdem jacent & existend in Parochia de M. prestat modo vel nuper in tenura sive occupatione prestat A. Domine Vidue vel assignatorum suorum clari annui valoris in omnibus exitibus ultra reprimas centum librarum (and so of the rest of the parcels.) Quae omnia & singula predict' prementioat cum pertinentiis unde prestat I. W. in reversione prestat sicut prefertur seisis existit, ego prestat Vie dicto die captionis hujus Inquisitionis in manus dicti Dni Regis cepi & seisis feci, prout per breve predictum mihi precipitur: Ac ulterius Juratores predicti super Sacramentum suum predictum similiter dicunt, quod predict' A. Domina W. modo superstes, & in plena vita existit; Ac quod prestat I. W. (tali die) seu unquam postea hucusque, nulla alia sive plura habuit, seu modo habet Maneria, terr tenementa seu hereditamenta, nec dicto die captionis hujus Inquisitionis aliqua habet bona seu catalla in dicta Balliva mea ad noticiam Juratorum predictorum seu eorum alicujus, quae modo extend' appreciari, aut in manus dicti Domini Regis seisis possunt. In cujus rei testimonium, &c.

Seisin de reversione in feodo talliato, invent. in Manerio dividend' in partibus.

In manus Domini Regis cepit & seisivit.

Quod tenens pro termino vite, modo superstes, & in plena vita, &c.

Nulla alia sive plura, &c.

Inquisitio, &c. coram me M. L. Armigero Vie Comd predict' virtute Brevis Domini Regis de melius inquirend' mihi direct' & huic Inquisitioni annexat per Sacramentum A. B. (& ceterorum Juratorum) proborum & legalium hominum de Balliva mea, qui jurat & onerat ad inquirend' qualiter & quomodo F. H. nuper de P. in Comitatu predicto Yeoman, ad mortem suam devenit, dicunt super Sacramentum suum, quod prestat F. H. in Brevis prestat nominat apud P. prestat in Comitatu prestat ex visitatione divina obiit, (or otherwise as the Case shall be :) Et sic Jur' prestat dicunt, quod prestat F. H. modo & forma prestat & non aliter, nec aliquo alio modo ad mortem suam devenit. In cujus rei, &c. tam ego prestat Vie quam Jur', &c.

Inquisitio super melius inquirend. quomodo & qualiter A. B. ad mortem devenit.

Ex visitatione divina obiit, &c.

add. ff.

Inquisitio indentat capta apud R. in Comitatu predicto (tali die) coram me M. L. Barronetto Vie Comd prestat virtute brevis dicti Domini Regis de re extend' fac' super Statut. Stapul' mihi direct' & huic Inquisitioni annexat per Sacramentum T. T. (insert the Jurors Names) proborum & legalium hominum de Balliva mea, qui jurat & onerat dicunt super Sacramentum suum, quod R. G. nuper de L. in Comitatu S. Armig' modo defunct' in brevi predicto nominatus citra (talem diem) in dicto brevi mentionat (quo die debuit mille librarum in eodem brevi specificat per ipsum recognit' fuit) seisitus fuit in Dominico suo ut de feodo, de & in tota illa pecia & parcella Marisci & terr Mariscal' cum pertinentiis continend per estimationem decem acras, &c. jacent & existend in Parochia de A. in dicto Comitatu M. abbuttand sive prope adjacent cuiusdam loco ibidem vocat C. O. ex parte orient &c. ante hac in separalibus

Inquisitio super breve de re extend' fac' super Stat. Stapul. pro Exeutore.

Seisin in Fee.

bus tenuris sive occupationibus, quorundam T. D. & I. H. aut eorum unius, vel assignatorum eorum, aut unius eorum: Quæ omnia & singula catalla, peciæ & parcelle Marisci & terræ Mariscæ & cætera præmissa præmentionatæ cum pertinentiis de quibus prædict' R. G. sic ut præfertur seiscitus fuit, in dominico suo ut de feodo ego præfat' Vic. dicto die captionis hujus Inquisitionis, diligenter extendi & appreciari, & in manus dicti Domini Regis nunc seisciri feci, ut idem Dominus Rex ea Edwardo Comiti S. Executori testamenti & ultimæ voluntatis S. M. Militis, in brevi præd' similiter nominat' quousque sibi de prædicto debito mille librarum plene satisfact' fuit, liberari fac' juxta formam Statuti apud Westm' pro hujusmodi debiti recuperand' inde editi & provis. secundum tenorem & effectum ejusdem brevis, ac prout per idem breve mihi præcipitur: Ac ulterius Juratores prædicti super Sacramentum suum prædictum similiter dicunt, quod nulli sunt sive existit, hæredes sive hæres qui infra ætatem existunt sive existit, quibus vel cui præmissa præmentionatæ cum pertinentiis de quibus prædictus R. G. sic ut præfertur seiscitus fuit, in dominico suo ut de feodo, aut aliqua inde parcella, jure hæreditario discederunt sive descendit, ad notitiam eorum, aut alicujus eorum: Denique Juratores prædicti super Sacramentum suum prædictum similiter dicunt, quod nulla sunt bona seu catalla in Balliva mea quæ fuerunt præfat. R. G. die obitus sui; neque sunt aliqua alia sive plura terr' tenementa seu hæreditamenta in dicto Comitatu M. de quibus idem R. G. præd' (die, &c.) seu unquam postea seiscitus fuit in dominico suo ut de feodo, quæ extendi, appreciari, aut in manus dicti Domini Regis nunc capi aut seisciri possunt, ad notitiam Jur' prædict' seu eorum alicujus. In cujus rei testimonium, tam ego præfat' Vic' quam Jur' prædict' sigilla nostra huic Inquisitioni apposuimus, die & anno primo supradict'.

*Midd. ff.*  
Inquisitio super  
Stat. Stapl.

*Possession of  
Goods in a  
Schedule annexed.*

*Seiscit. jure uxoris.*

*Quod tenet  
in simul & pro  
indiviso.*

Inquisitio indentatæ capæ apud W. in Comitatu prædicto (tali die) coram me A. B. Mil' & Barr' Vic' Com' virtute brevis dicti Domini Regis de Statut' Stapul' mihi direct' & Inquisitioni annexat' per sacramentum I. S. (insert the Jurores) proborum & legalium hominum de Balliva mea, qui jurat & onerat' existend' dicunt super Sacramentum suum quod W. G. de A. in Comitatu præd. Armiger in brevi prædicto nominatus, dicto die captionis hujus Inquisitionis possessionatus fuit & existit de bonis & catallis suis propriis, de & in omnibus & singulis bonis & catallis in Scheda sive Inventorio indentatæ huic Inquisitioni annexatæ particulariter mentionatæ & expressis, separatim preciarum & valorum in eadem Scheda sive Inventorio particulariter specificatæ attingend' in toto ad sexaginta & tres libras legalis Monetæ Angliæ: Ac etiam Juratores prædicti super Sacramentum suum similiter dicunt, quod prædict' W. G. & M. uxor ejus, nuper dicta M. G. circa tempus Recognitionis debet octingentarum librarum in eodem brevi mentionatæ scilicet citra (diem, &c.) in dicto brevi specificatæ seiscit' fuer' & dicto die captionis hujus Inquisitionis seiscit' est, (in jure ipsius Mariæ) in Dominico suo ut de feodo, de & in medietate omnium & singulorum Messuagiorum, tenementorum & hæreditamentorum quorumcunque, cum pertinentiis postea particulariter mentionatæ & expressis existend' in toto clari annui valoris in omnibus exitibus ultra reprim' 70 l. legalis monetæ Angliæ: Ac de & in medietate duorum Claus. (name the particulars here:) Omnia quæ quidem Messuagia, terras, tenementa & hæreditamenta præmentionatæ cum pertinentiis præd' W. G. & Mariæ uxor ejus, ut in jure ipsius Mariæ & I. H. Gen' & Francisca uxor ejus, ut in jure ipsius F. in simul pro indiviso tenent

ac

ac de eisdem modo seifiti existunt, in Dominico suo ut de feodo: Ac ulterius Juratores prædicti super Sacramentum suum prædictum similiter dicunt, quod prædict' M. uxor prædict' W. G. adhuc superstes & in plena vita existit, scilicet apud W. prædict' in Comitatu prædict'. Ac insuper Juratores prædicti super Sacramentum suum prædictum similiter dicunt, quod prædict' W. G. citra tempus recognitionis debiti prædicti, in dicto brevi specificat scilicet citra prædict' (diem, &c.) seifitus fuit, & dicto die captionis hujus Inquisitionis seifit' existit, in Dominico suo ut de feodo, de & in uno capitali Messuagio, &c. Quæ quidem bona & catalla in Scheda live Inventorio prædict' mentionat necnon omnia & singula Messuagia, terra, tenementa & præmissa præmentionat cum pertinentiis scilicet tam medietatem omnium & singulorum Messuagiorum, Cortagiorum, terrarum, tenementorum & hæreditamentorum, cum pertinentiis de quibus prædict' W. G. & M. uxor ejus, sic ut præfertur seifiti fuerunt & existunt in Dominico suo ut de feodo, in jure ipsius M. Quam prædict' capitale Messuagium, &c. ego præfat' Vie in manus dicti Domini Regis seifiri feci juxta exigentiam brevis prædict' ac prout per idem breve mihi præcipitur. Ac denique Juratores prædicti super Sacramentum suum prædictum similiter dicunt quod prædictus W. G. die test. brevis præd' scit (tali die, &c.) anno supradicto seu unquam postea hucusque possessionatus fuit live existit, de nullis aliis five pluribus bonis seu catallis in Balliva mea, neque fuit live existit, idem W. G. in jure suo proprio, aut in jure præfat' M. uxoris ejus, seifitus de aliquibus aliis five pluribus terris, tenementis seu hæreditamentis in dicto Comitatu M. prædicto tempore recognitionis debiti præd. scilicet dicto (die, &c.) anno supradicto seu unquam postea hucusque, quæ extendi, appreciari, aut in manus dicti Domini Regis seifiri possunt, ad notitiam Jur' præd' seu eorum alicujus. In cujus rei testimonium, tam ego præfat' Vie quam Jur' præd' sigilla nostra huic Inquisitioni apposuimus, die & anno primo supradictis.

Adhuc superstes, & in plena vita.

Delivery by the Sheriff, as well Goods as Lands.

Nulla alia bona, terr. &c.

Qui dicunt super Sacramentum suum quod A. in brevi præd' nominat præd' die captionis hujus Inquisitionis possessionatus fuit, de bonis & catallis hic postea mentionat ut de bonis & catallis suis propriis, videlicet de uno equo precii 40 s. tribus vaccis cum tribus vitulis, precii cujuslibet vacce cum vitulo suo 30 s. una mensa, tribus cathedris, tribus sellis vinctis, (and so name all the Goods in particular) ad valenc 10 l. & Jur' præd' super Sacramentum suum præd' ulterius dicunt, quod prædict' A. die redditionis judicii in brevi prædict' mentionat scilicet die, &c. seifit fuit & modo seifit' existit in dominico suo ut de feodo, vel in dominico suo ut de libero tenemento in jure B. uxor. ejus, (quæ modo superstes & in plena vita existit) (as the case is) de & in uno Messuagio & quibusdam parcellis terræ, prati & pasturæ cum pertinentiis continend per æstimationem centum acras, vocat' vel cognit' per nomen de Hametis Farm, situat' jacent' & existend in D. in Comitatu præd' modo vel nuper in tenura vel occupatione F. vel assignatorum suorum, clari annui valoris in omnibus exitibus ultra repris. 20 l. ac de & in, (and so find all the Lands) omnia quæ quidem bona & catalla supradicta, necnon medietat' terrarum & tenementorum præd' per Inquisitionem præd' in forma præd' compert' videlicet præd' Messuagium, &c. (and to assign a Moiety) ego præfat' Vie præd' die captionis hujus Inquisitionis, virtute brevis præd' præfat' R. in eodem brevi mentionat per rationabile precium & extenit præd' liberari feci tenend' bona & catalla præd' ut bona & catalla sua propria, ac etiam tenend' medietat' præd' ut liberum tenementum suum libi & assignatis suis juxta formam Statuti in eodem brevi

Another Return of an Elegit executed de bonis & catall. & de terris.

A Moiety set out.

brevi mentionat quousque debitum & dampna in eodem brevi spec' plenar' inde levaverit, prout breve illud in se exigit & requirit: Et ulterius Juratores predicti dicunt super Sacramentum suum predictum quod predict' A. non habuit (tali die) in brevi predicto spec' (quo die breve illud emanavit) nec unquam postea aliqua alia live plura bona seu catalla in balliva mea, nec habuerint predict' die redditionis Judicii predict' seu unquam postea aliqua alia live plur' terras seu tenementa in balliva mea, quæ extendi & appreciari possunt ad notic' Jur' predictorum. In cujus rei testimonium, &c.

*Lands and Fee-farm Rent extended on an Elegit, and the Rents only delivered for a Moiety.*

Qui dicunt super Sacramentum suum, quod A. in brevi predicto nominat die redditionis Judicii in eodem brevi mentionat scilicet die, &c. scilicet fuit in dominico suo ut de feodo, de & in Manerio de D. cum pertinentiis in Comitatu predicto ac de & in uno capitali Messuagio, cum pertinentiis, &c. (and so go over all the Lands in common form) ac de & in toto annuali redditu live feodo firma, triginta & quinque librarum legalis monetæ Angliæ exund live reservat de vel ex Manerio de D. in Comitatu predicto.

*Retorn. breve de inquirend' super Statut. Westm 2.c.46. de eis qui noctanter sepes prostraver. &c. This Writ being at the Suit of a private person, it must be indorsed, Pleg. de prof. J. Doo & Rich. Roo.*

Inquisitio indentat cap' &c. virtute brevis dicti Domini Regis ad inquirend' qui malefactores & pacis Domini Regis perturbatores apud R. in Comitatu predicto vi & armis sepes & fossat Henr. W. ibid per ipsum nuper levat. noctanter aut (tali tempore) quo facta eorum scire non credebant prostraver' ad grave dampnum ipsius Henr. W. eidem Vie direct' & huic Inquisitioni annex. per Sacramentum, &c. proborum, &c. Qui dicunt super Sacramentum suum, quod quidam malefactores & pacis dicti Domini Regis perturbatores, vicesimo primo die Augusti Anno, &c. apud, &c. vi & armis septuagint' perticat sep. & fossat præd' Henrici ibid. nuper ante tunc per ipsum levat. noctanter aut tali tempore quo facta eorum scire non credebant prostrassent contra pacem dicti Domini Regis, sed qui vel quis sepes & fossat præd' prostrasset vel prostrassent Jur' præd' penitus ignorant. In cujus rei testimonium, &c. See for this in Chapter Retorn in this Supplement.

*Retorn breve de distr. propinquas villar. sepibus præd. circumadjacen.*

**Indorse on the back of the Writ, Manucap. separalium inhabitand de E. F. G. (naming every Vill) existend propinque villar sepibus & fossat infra script circumadjacen. Johannes Doo, & Richardus Roo.**

Exit. Inhabitand de E. — § l.

Exit. Inhabitand de F. — § l. & sic de cæteris Vill.

**Tarde Retorn.**

Et ulterius Domino Regi infra script' certifico, quod istud breve adeo tarde mihi deliberat' fuit, quod propter brevitat' temporis dampna in Inquisitione huic breve annex. mentionat eidem Domino Regi restituere non possum, resid. Executionis istius brevis, patet in Inquisitione predicta huic brevi annex.

Inquisitio, &c. Qui dicunt super Sacramentum suum, quod Henr. W. in brevi huic Inquisitioni annex. nominat sustinuit dampna occasione in eodem brevi specificat' ad 80 l. In cujus rei, &c.

**Note, If the Sheriff omit any of the Wills that are circumadjacent out of his Retorn, the rest have an Action against him for so doing.**

Ego

Ego A. B. Mil. Vic' Comd' præd. Justic' Domini Regis de Banco, ad Refcous re-  
diem & locum in brevi huic Schedule annex. mentionat' certifico, quod torn.  
virtute istius brevis mihi direct' ego præfāt Vic' feci quoddam warrantum  
meum sigillo officii mei Vic' sigillat' quibusdam R. D. & S. ballivis meis,  
conjunctim & divisim direct' ad capiend' & arrestand' W. in eodem brevi  
nominat' ad respond' I. F. in eodem brevi nominat' de placito debiti  
200 l. secundum exigent' istius brevis; qui quidem R. & D. postea, & ante  
retorn' brevis præd' scilicet 11 Jan. &c. præfāt W. apud Pagham in Com'  
præd' virtute warrant' præd' ceperunt & arrestaverunt, & cum usque Ga-  
olam Domini Regis apud H. in eodem Comd' ductur' fuer' ; atque ea de causa  
præd' R. & D. 12 die Jan. &c. ipsum W. a Pagham præd' usque Pal-  
borough in eodem Comd' erga Gaolam præd' duxissent, super quo præd'  
W. & quidam A. & B. præd. 12. die Jan' &c. anno, &c. vi & armis,  
&c. in præfāt Ballivos meos apud Palborough præd' insul' fecer' & præ-  
dict' A. & B. præd' W. (sic arrestat' & in itinere suo erga Gaolam præ-  
dict' existend') extra custodiam meam, contra voluntatem eorundem Balli-  
vorum meorum, adtunc & ibidem rescusserunt, & eundem W. ad largum  
ire procuraverunt. Et prædict' W. seipsum adtunc & ibidem (similiter)  
rescussit & escapiavit : Et postea, & ante Retorn' brevis præd' præfāt W.  
non est invent' in Balliva mea. ( Vide Chapter Refcous in this Sup-  
plement.)

Capt. apud  
Pagham, and  
carried to P. to-  
ward the Gaol,  
and there  
rescued.

Certifico, quod infranominat' I. D. non detent' existit in priso- Al. Hab Corp  
nodia mea nec fuit die receptionis istius brevis, seu unquam postea, nec ali- nūl tiel priso-  
qua causa detentionis ipsius I. mecum residet. Et ideo corpus ejus coram, nar.  
&c. habere non possum.

Nos R. R. Mil. & R. F. Mil. Vic' Civitat' London' & E. M. Coro-  
nator ejusdem Civitatis, Serenissimo Domini Regi in Canc' sua humilli-  
me certificamus, quod virtute Brevis Dñi Regis huic Schedule annex. nobis  
direct' cepimus bonam & sufficientem securitatem pro Johanne Turnor,  
in dicto brevi nominat' (videlicet) sex manucaptos sufficientes qui sus-  
ceperunt super se pro præd' Johanne quod idem Johannes seipsum bene  
gereret, tam erga dictum Dominum Regem nunc hæredes & successo-  
res suos, quam erga cunctum populum dicti Domini Regis, secundum  
formam Statuti in brevi præd' mentionat'. Cujus securitatis forma in al-  
tera Scheda huic brevi annex. plenius liquet & apparet. In cujus rei tes-  
timonium, tam præfāt Vic' quam Coronator præd' in his præsentibus  
sigilla sua apponi fecerunt, vicesimo secundo die Aprilis Anno Regni dicti  
Domini Regis nunc decimo sexto.

Certificate by  
Sheriff and Co-  
roners that J. T.  
hath given se-  
curity for his  
Good Behaviour  
before the al-  
lowance of his  
pardon.

Vide the Stat.  
10 E. 3. where-  
upon this Writ  
is made.

In another Schedule annex the Security it self.

Et ulterius præd' Advocatio Ecclesiæ de T. præd. allocatur & assignatur, per me præfāt Vic' præd' Tho. W. & D. uxori ejus, A. N. & Elizabethæ uxori ejus, H. S. & C. uxori ejus, T. H. & E. uxori ejus, & G. C. & hæredibus apparent. Dorotheæ E. E. Cordeliæ & Graciæ, per turnos modo & forma sequend' videlicet, quod præd' T. W. & D. uxor ejus, in jure ipsius D. & hæred' & assign' ipsius D. Clericum suum ad eandem Ecclesiam cum primo & proximo vacare contingat, ut in turno suo præsentabunt : Et præd' A. & N. & Elizabetha uxor ejus in jure ipsius Elizabethæ, & Hæredum & Assignatorum ipsius Elizabethæ, ad Ecclesiam præd' cum per mortem, cessionem, privationem vel resignationem Clerici, qui ad præsentationem præd' T. W. & Dorotheæ uxoris ejus, vel Hæred'

Brevi de par-  
titione de Ad-  
vocatione ad  
præsentand.  
Per turnos

Hæred. vel Assignd ipsius Dorotheæ, ad eandem Ecclesiam fuerit admissus & institutus, seu quocunque alio modo tunc prox. vacare continget Clericum suum ut in turno suo proprio præsentabunt: Et præd' H. S. & Cordelia uxor ejus, in jure ipsius C. & Hæred' & Assignd ipsius C. Clericum suum ad eandem Ecclesiam, cum per mortem, cessionem, &c. (ut supra, of the last befoze, & sic de cæteris, &c.) Et sic alternatim & successive præd' T. W. & D. Hæred' & Assignd ipsius D. ut in turno suo, ac præd. A. N. & E. uxor ejus, Hæred' & Assignd ipsius E. ut in turno suo, ac prædict' H. S. & C. Hæred' & Assignd ipsius C. uxoris ejus, ut in turno suo, ac præd' T. H. & E. uxor ejus, Hæred' & Assignd ipsius E. ut in turno suo & præd' Gratia, Hæred' & Assignd sui, ut in turno suo, præsentabunt Clericos suos respective ad Ecclesiam præd' absque contradictione live impedimento alicujus eorum ad alium imperpetuum.

*The Sheriff upon a Fi. fac. may sell Corn growing.*

Nota, The Sheriff upon a Fieri Fac may seize and sell Corn growing upon the Defendants Land, and the party to whom this Sale is made, shall have Liberty of cutting and carrying of it away by virtue of such Sale made by the Sheriff or other Officer in the Execution of his Writ.

*But it is a Quære whether he may sell Grass.*

But it is a Quære whether the Sheriff may seize and sell Grass growing, because Grass grows naturally out of the Land without any Tillage.

*Al. acced. ad Cur. Vic. ret. quod seign. non vult tenere Cur.*

Virtute, &c. accessi ad R. infra script' & ibidem rogavi infranominat' W. S. cum magna instantia tenere Curiam suam infra script' ut executio istius brevis mihi direct' ibidem secundum formam ejusdem per me fieri possit. Et idem W. Curiam suam ibidem a tempore receptionis istius brevis, usque diem retorn. inde, tenere minime curavit, & omnino recusavit. Et ideo execut' istius brevis facere non possum.

*Al. acced. ad Cur. ret. quod le suitors noluer. liberare record.*

Virtute, &c. assumptis mecum D. F. &c. quatuor discret' & legat' Mil. de Balliva mea accessi ad Cur' infranominat' I. B. tent. apud O. (tali die, &c.) ad recordand' in Curia illa loquelam infra script' ad tunc & ibidem requirend' B. C. &c. sectatores Curia præd' tunc ibidem existend' ad deliberand' mihi recordum loquelæ præd. ut recordum illud haberem coram Justic' &c. præd' qui sectatores recordum præd' mihi liberare noluer ob quod recordum illud coram Justic' &c. habere non possum.

*Al. brief de homine repleg. ter. quod il. est esloigne.*

Domino Regi certifico, quod executio istius brevis juxta formam & effectum inde facere non possum, eo quod ante adventum istius brevis mihi direct' W. S. infranominat' per infra script' C. D. & alios ad loca mihi incogn' elongat' fuit, & adhuc elongat' existit, ita quod ipsum W. videre ac visum seu notitiam de eo aliquatiter habere minime possum. Et ulterius certifico, quod nullum aliud breve ad replegiand. præd' W. præterquam istud breve ad manus meas unquam devenit.

*Al. repleg. averia nullus ven. o monstre l'avers.*

Quoad Repleg faciend' infranominat' J. catalla infra script' nullus ex parte ejusdem J. venit ad ostend' mihi quæ, quot, & qualia catalla ipsius J. infranominat' T. & alii ceperunt & injuste detinuer' Ideo catalla illa præfat' J. minime repleg possum.

Istud breve & duo alia brevia simul & semel mihi deliberat. fuer. (tali die, &c.) & non antea, & virtute istius brevis accessi ad B. in Com. meo, ubi averia infra script. fuer' ad illa, infranominat. A. replegiand. & infranominat. E. B. miles in Jure suo proprio, & infranominat. W. ut ballivus ipsius E. clam. proprietat. averiorum prædict. fore averia propria prædict. E. & ideo averia illa præfat. A. repleg. non potui, juxta exigent. hujus brevis.

*A Return of property claimed.*

Pro executione istius brevis faciend. mandavi Ballivo libertat. Domini Regis de S. parcell. ducat. sui Lancastr. qui habet plenum retornum omnium brevium & executionem eorundem infra libertat. prædict. & cui execut. istius brevis totalit. pertinuit faciend. eo quod execut. ejusdem brevis extra libertat. prædict. per me Vic. Com. prædict. fieri non potest, qui quidem Ballivus videlicet R. D. mihi sic respond. quod virtute cujusdam præcepti per me præfat. Vic. eidem Ballivo direct. fecit quoddam warrant. suum R. R. & T. ballivis suis conjunct. & divisim, virtute cujus war. præd' R. & T. infranominat. G. apud B. in Com. præd' infra libertat. præd' die Lunæ 20. die, &c. arrestaver. & eum usque Gao-lam Domini Regis de M. salvo duci voluissent, & super hoc præd' G. cum multis aliis, modo guerrino arraiat, prædict. die, anno & loco in prædict. R. & T. vi & armis, videlicet gladiis, &c. insult. & rescussum fecer. & eos adtunc & ibidem verberare & vulnerare voluissent, & sic præd' G. a custod. Ballivi præd' evasit, & eum nunquam postea in balliva sua invenire potuit. — See Chapter Rescous in this Supplement.

*Rescous ret. per ball. libertat.*

Qui dicunt super Sacramentum suum, quod A. in brevi prædict' nominat. die redditionis Judicii in eodem brevi mentionat. scilicet die, &c. seisit. fuit in Dominico suo ut de feodo, de & in Manerio de D. cum pertin. in Com. præd' ac de & in uno capital. messuagio, cum pertin, &c. (and so go over all the Lands in common form) ac de & in toto illo annuali reddit. five feodo firmo, triginta & quinque librarum legalis monete Angliæ, exeun. five reservat. de vel ex scitu domus mansionalis Manerii de H. in Com. præd' cum suis pertinentiis universis, ac omnibus & singulis illis terris Manerio de H. prædict. spectan. ac omnibus illis terris prat. pasc. & pastur. dominical. eidem Manerio, cum suis Juribus, membris & pertinent. universis in Com. prædict. annuat. ad festa sancti Mich. Archang. & Annunciat. beatæ Mariæ Virginis, per æquales portiones solvend. ac de & in toto illo annuali reddit. five feod. firm. decem librarum legalis, &c. exeun. five reservat. de aut pro redditibus assise liberorum & customar. tenen. prædict. Menerii de H. & pro communi fine ejusdem Manerii de H. in Com. prædict. annuat. ad festa supradict. per æquales portiones solvend. Et Jur. prædict. super Sacramentum suum prædict. ulterius dicunt, quod prædict. separales annuales reddit. 35 l. & 10 l. valent clare per ann. in omnibus exit. ultra reprim. 40 l. & sunt una medietas præmissorum prædict. per Inquisitionem præd. superius compert. Quos quidem separales annuales reddit. 35 l. & 10 l. Ego præfat. Vic. dict. die caption' hujus Inquisitionis, virtute brevis prædict. J. W. in eodem brevi nominat. per extent. prædict. liberari feci, per extent. prædict. tenend. sibi & assignatis suis, &c. prout, &c. in Common form.

*A Fee-farm Rent extended.*

Fuit seisit. in Dominico suo, ut de libero tenemento pro termino vitæ suæ, de una annuitate five annuali reddit. 20 l. exeun. de &c. ad festa, &c. per æquales portiones solvend. &c. Mich. 23, 24 Eliz. Roll. 801. in Co. Banco. Vide Croke 2 part. fol. 78.

*An Annuity extended. Tarde quoad distr. Jur. executed, quoad tales.*

Justic. infra script. certifico, quod quoad distringend. A. B. & ceteros Juratores in hoc brevi nominat. breve istud adeo tarde mihi liberat. fuit, quod propter temporis brevitatem executionem inde facere non possum,

C c c c

sed

Al. breve de  
proclam. Vic.  
retorn. un fois  
proclam. fuit,  
& tarde quoad  
resid. execut.  
unde.

frd. quod ponend. decem talium, unde in brevi prædict. fit mentio execut. inde patet, in quodam pannello huic brevi annex. *The panel of Ten.* Quilibet Jur. prædict. per se attach. est, per pleg. J. D. & R. R.

Virtute &c. Ad Com. meum E. tent. apud Castrum E. 20 die Junii, anno infra script. proclam. feci prima vice, quod infra nominat. W. se red-deret Vic. *London*, ita quod iidem Vic. haberent corpus ejus coram Justic. &c. ad diem & locum infra content. ad respondend. infranominat. C. de placito infra script. & quod plenam executionem istius brevis nihil ulterius actum est per me præfat. Vic. pro eo quod post receptionem istius brevis ac ante retorn. ejusdem, non fuerunt plur. Com. in eodem Com. E. tent. nec generalis sessio pacis tent. fuit in partibus C. in brevi prædict. specificat. Et sic breve istud adeo tarde mihi liberat. fuit, quod propter temporis bre-uitatem illud exequi non possum.

Sur Ex. fa.  
quod le Co-  
ron. fuit ab-  
sent.

Quod fuit *but*  
*one Coroner*, qui  
*refuse to pro-*  
*nounce le ucla-*  
*sy.*

Quarto exact. fuit & ad eundem Com. J. M. & C. D. Coronatores Domini Regis Com. prædict. solemniter, exact. non vener. Ideo ad exe-cutionem brevis prædict. ob eorum defect. ulterius ibidem procedere non potui.

Quinto exact. fuit & non comper. & quia nulli ibidem interfuer. Coron. Domini Regis Com. præd. præter. A. B. Coron. Domini Regis in partibus de S. qui quidem A. Judicium Utlagarie in hac parte promulgand. ibidem reddere recusavit. Ideo de ulteriori executione brevis prædict. per me nihil actum est ad præsens.

Al. bre. de vi-  
sum dote ux.  
retorn. quod  
nullus & eum  
ad habend. vi-  
sum, &c.

Precept del  
Tolt.

Certifico, quod infranominat. W. nec aliqua persona vel personæ pro eo, vel ex parte sua non venit mihi meove sub Vic. vel deputat. meo, ad ha-bend. visum de Manerio infra script. cum pertin. Ideo non potui causare ip-sum W. habere visum de Manerio illo prout per breve illud mihi preci-pitur.

A. B. Vic. Com. prædict. Ballivo Domini Regis & meo in Com. præ-dict. itineranti salutem, ex parte Domini Regis tibi præcipio firmit. injun-gend. quod in propria persona tua accedas ad Cur. C. D. Ar. Manerij sui de S. & loquelam quæ est in eadem Cur. per breve Domini Regis de Recto paten. inter F. G. & M. P. de tribus Messuagiis, &c. in C. tollas & illam habeas in Com. meo apud N. die Lunæ, &c. prox. futur. tenend. & sum. per bon. sum. præfat. M. & P. quod tunc sint ibi præfat. F. inde res-ponsur. & habeas ibi sum. & hoc præcept. dat. in Com. meo apud N. die Lunæ 2. die Maij Anno, &c. Quia prædict. M. est unus ballivorum qui Cur. prædict. tenent. per quod prædict. tenent. prædict. F. rectum in Cur. illa consequi non possit.

Vel sine brevi,  
as the case is.

**The like to remove any plaint, mutatis mutandis, and in every such Tolt a special cause must be assigned in the precept, as favour, &c.**

Retorn. seifina  
in Dote.

*The particulars.*

Virtute istius brevis mihi direct. & huic Schedul. annex. (tali die & anno) habere feci N. H. & A. uxori ejus, in brevi prædicto nominat. plenariam seifinam suam, de tertia parte terrarum & tenementorum cum pertin. in eodem brevi specificat. (videlicet) de una aula, uno par-vo introitu, una porticu, uno conclavi, uno promptuario, (Anglice a *Buttery*) una domo lactuaria, (Anglice a *Milk-house*) & una parva area, parcell. unius Messuagii in brevi prædicto content. modo in tenura sive occupatione L. F. in eodem brevi nominat. cum liberis ingressu, egressu, & regressu, in, ad & ab eisdem; Ac etiam de occi-dentali parte, unius pomarii, in eodem brevi specificat. continen. per æstimationem septem virgat. in longitudine, & quatuor virgat. in la-titudine, necnon de duabus acris & dimidii unius acræ terræ, parcell. octo acrarum terræ cum pertin. in brevi prædicto content. jacen. & existen. in australi parte, & sine earundem octo acrarum ter-ræ,

terræ, ac modo vel nuper in tenura sive occupatione prædicti I. F. vel assign. suorum, cum liber. ingressu, & egressu, regressu in, ad & ab eisdem, tenend. præfat. N. & A. in separalitate, per metas & bundas, nomine totius dotis prædictæ A. ipsi præfat. A. de tent. in brevi prædict. specificat, post mortem P. L. in eodem brevi nominat. contingen. prout per breve prædict. mihi præcipitur.

Tenend. per metas & bundas.

*Note, the Sheriff for his own safety before he makes return of this Writ, shall take the hand of the Attorney who prosecutes the Writ, to the draught or copy of this return, thereby desiring the Sheriff to make the return, and declaring therein that he and his Client will be therewith content.*

Pro executione istius brevis fiend. mandavi Ballivo libertat. &c. ut supra; qui quidem Ballivus, (videlicet) A. B. mihi respondet, quod ipse virtute præcepti mei prædict. sibi inde direct. 10 die, &c. cepit in manus Domini Regis tent. infra script. cum pertin. per visum A. B. C. & D. proborum & legalium hominum de libertat. prædict. ac quod suum. infranominat. R. essendi coram Justic. infra script. ad diem & locum infra content. (videlicet) per W. M. R. T. & C. D.

Mandavi Ball. & ipse resp. &c.  
Grand cape in Formedon.

Infranominat. quer. non invenit mihi pleg. de prosequend. loquelam suam infra script. Ideo quoad execut. istius brevis nihil per me actum est.

Al. orig. que non inven. Vic. pleg. de prosequend.  
Scir. feci vers. terr. tenen.

Virtute, &c. per Antonium B. & Tho. N. probos & legales homines de Balliva mea, scire feci Leonardo G. tenenti unius Messuagii, unius domus Anglice vocat. a Forge, centum acrarum terræ, viginti acrarum prati, viginti acr. pastur. viginti acr. bosci, & viginti acrarum jampnorum & bruer. cum pertin. situat. jacen. & existen. in parochia de W. (or, Parochiis de W. F. & S.) in Com. Suffex, que fuer. terr. & tenement. infranominat. I. B. De quibus idem I. die redditionis judicii infra script. & postea seisis fuit in Dominico suo ut de feodo, quod sit coram Domino Rege infra script. ad diem & locum infra content. ad ostendend. in forma infra script. & ulterius ad fac. & rec. prout istud breve in se exigit & requirit: Et nulli sunt hæred. neque est aliquis hæres prædict. I. nec sunt aliqui tenentes, nec est aliquis tenens aliquorum al. terrarum vel tenementorum, que fuer. prædict. I. tempore redditionis judicii prædict. vel unquam postea in Balliva mea, cui vel quibus scire facere possum. (Vide Chapter Return in this Supplement.)

Infranominat. A. nihil habet in Balliva mea, per quod distringere potest, nec est invent. in ead.

Nihil to the distr. in Audita querela. Aliter.

Non habet aliqua terr. seu tenementa, bona seu catalla in Balliva mea, per quod distringere potest.

Infranominat. A. district. est per unum equum precii 5 l & similiter infranominat. B. district. est per unam peciam panni ad valenc. 10 s.

District. est per bona.

Manu capt. A. B. & utriusque eorum { Johannes Doo  
per se,  
Richardus Roo.

*Nota, See Dyer 199. The Sheriff returns to the Original, that the Defendant was attached per catalla ad valenc. &c. but did not return what cattel in specie, and it was there held that the return was insufficient, because the cattel by which the Defendant is attached, are forfeited to the King, at the day of the return, if the Defendant makes default.*

Attached per catalla ad valenc. but did not return what cattel.

## C A P. VII.

## Escape.

## S E C T. I.

Where the Sheriff shall be chargeable therewith, and where the Bailiff; and what shall be adjudged an Escape, and how the Sheriff may discharge himself by act in Law, &c.

First, Where the Sheriff shall be chargeable for Escapes, and where the Bailiff, &c.

*A Serjeant suffers a prisoner taken upon a plaint to Escape, he only is chargeable. The Sheriff is Judge, not an Officer of that Court, though Goalor of the Compter.*

*Yet it is otherwise upon an arrest upon a Lat. for if an Escape is suffered, there the Sheriff is chargeable.*

*Where a Bailiff errant is chargeable.*

*Where an Under-sheriff is chargeable.*

*Yet for a Bailiff's insufficient return, the Sheriff is chargeable.*

*If J. S. puts his own name in a warrant, and suffers an Escape, the Sheriff is not chargeable herewith.*

**I**f a plaint is leyed in the Sheriffs Court in London, and thereupon a Serjeant at Pace takes the Defendant, and in carrying of him towards the Compter, the Prisoner Escapes, here the Serjeant is only lyable to an action for this Escape, and not the Sheriff: because the prisoner not being within the Walls of the Compter, was never in the Sheriffs custody: The Sheriff is the Judge of that Court, and not a Ministerial Officer to execute Process there; but he is Goalor of the Compter, and ought to answer for all Prisoners there.

*Dun verf. Pary Mich. 13 Car. in B. R. Rolls tit. Escape 8-6*

But if a Serjeant at Pace arrest a man by vertue of a Warrant issuing out upon a Latitat, and afterwards suffers him to Escape, before he brings him to the Compter: here in this case an action lyes against the Sheriff only for this Escape, because he was in the custody of the Sheriff presently upon this arrest; and the Sheriff is the Officer of the Court of Kings Bench, and not the Serjeant.

*Ibidem.*

But if a Bailiff Itinerant take a man in Execution, and he suffer him to Escape, an action lyeth against the Bailiff himself; so likewise it is in case of an Under-sheriff: for it may be the High-sheriff knew nothing of the matter, because the Writ was delivered to the Under-sheriff and he took a fee for it, and therefore it is reason that he should be punished: But if a Return made by a Bailiff be insufficient, there the High-sheriff shall be amerced.

*Per Snag. Justice, int. Marsh & Astrey, Leon. 1 part. 146.*

But if the Sheriff directs his Warrant to his Bailiff, and afterwards I. S. puts in his own name, as Special Bailiff, and thereupon arrests the Defendant, who Escapes; here I. S. shall be only chargeable, and not the Sheriff, because the Defendant was never in the Sheriffs custody, but only in the custody of I. S.

*Brown verf. Adams, Cr. El. 745.*

What

What shall be an Escape in the Sheriff or Gaoler, &c.

Frofts case,  
5 R. 89.

If the Sheriff hath one in his custody, against whom one B. hath a Judgment, if B. while the party is in the Sheriffs custody, bring a Ca. Sa. to the Sheriff, and desire him to detain him by virtue thereof and the Sheriff refuses, but suffers him to go at large; It was held by the Court, that it was an Escape in Law, for which an action well lies.

*It is an Escape for the Sheriff, not to charge a prisoner in Execution, after an Execution delivered to him.*

Norgates case,  
Tr. 13 Jac. per  
Cook Rolls tit.  
Escape 810.

A man recovers against two jointly, and takes both of them in Execution, and afterwards one of them is suffered to Escape: The Sheriff is liable to an action for this Escape, though the other continue in prison, and the whole Debt shall be recovered against the Sheriff.

*A Judgment is had against two, one of them Escapes, the Sheriff shall pay the whole Debt.*

Dr. Sutcliffe  
verf. Sir Geo.  
Reynell, Tr.  
13 Jac. Rolls  
tit. Escape 810.

So likewise where a man recovers against a man and his wife, and takes them both in Execution, and the wife escapes; the Sheriff shall be charged with this Escape, and the whole Debt shall be recovered against him, though the husband continue in prison.

*Judgment against Husband and wife, they are both taken, the wife Escapes; the Sheriff shall pay the whole Debt.*

The Sheriff of  
Essex his case,  
Hob. 202.

If a Prisoner is willingly let out of prison by the Sheriff or Gaoler, and afterwards of his own accord, comes into the prison again, yet this is an Escape in Law, for which the Sheriff is chargeable: For the prisoners rendering of himself again, hath not purged the Escape.

*For a prisoner to be let out of prison, although he return again, is an Escape.*

What liberty a Prisoner in Execution may have upon a Hab. Corp.

Mich. 14 Car.  
Cr. Car. 14.  
Balden verf.  
Temple, Mic.  
15 Jac. Hob.  
Rep. 202.

Although when a Hab. Corp. is granted for a prisoner in Execution, it is not justifiable for the Marshal by colour thereof, to let the Prisoner go at large with his Keeper in the vacation of Term time until the appointed time when he is to return to prison; for the prisoner Keeper shall have only a convenient time to bring the Prisoner in Court and to carry him back to prison again; and if they shall let him go at large any longer time than is convenient, it is an Escape.

*Upon a Hab. Corp. in the vacation, the Sheriff must not let the Prisoner go at large without his Keeper.*

Nota, the Court is to judge how long time is convenient to bring a Prisoner before them, and how long time is sufficient to return him again.

*What time the Sheriff is allowed to bring in his Prisoners.*

Trin. 12 Car.  
Cr. Car. 466.

So likewise afterwards in Tr. 12 Car. it was held by all the Justices and Barons, that an Hab. Corp. was an ancient and legal Writ; yet under colour thereof, the Warden of the Fleet, nor Marshal, &c. ought not to suffer Prisoners to go at large; for such permission is an abuse of the Writ, and an Escape in the prison keeper: which resolution, the Book saith, the King approved very well of, and commanded it to be observed.

Smalls case,  
Bulstr. 2 R.  
148. Platts  
case, Plo. Com.  
36. Dyer 166.

Per Cook Chief Justice, Prisoners sub custodia, are not to go out of the prison by bail & baillon, unless it be by commandment of the King, or of the Kings Writs, or by agreement of the parties, and not otherwise; and such kind of liberty given to them by their Keeper, without any such former warrant is clearly an Escape in Law.

*Prisoners in Execution must not stir out of the Prison without a Hab. Corp.*

*How the prisoner is punishable for an Escape.*

It was resolved by the whole Court, That although a Prisoner depart from prison with his Keepers license, yet it is an offence as well punishable in the Prisoner, as in the Keeper: And Calthorp made this difference betwixt breach of Prison, and Escape; the first is against the Gaolers will, the other is with his consent, but in both cases the Prisoner is punishable; wherunto the whole Court agreed.

Sir Miles Herbert, and Sir Will. Strouds case, Cr. Car. 209.

*Escape lies against a sworn Deputy Marshal.*

A Deputy Marshal who was sworn in open Court, licensed a Prisoner charged in Execution, to go into the Country with a Keeper; and it was adjudged, that although he was but Under-Marshal, yet he was chargeable, and the action well brought.

Gawdyes case, Dyer 278.

Where fresh suit shall be well made, and how the Sheriff shall be discharged thereby.

*Where fresh suit is a good plea.*

Debt was brought against the Marshal, for suffering a Prisoner in Execution to Escape; he pleaded, that the Prisoner broke prison and escaped, and he freshly pursued her, and took her again in fresh suit; and to this plea the Plaintiff demurred: And the Court held, that this was not any plea, because by the action here brought, a voluntary permission *in ad largum* is implied, which is neither denied nor traversed, and if the Sheriff voluntarily permits a Prisoner to go at large, he cannot re-take him; and so this reprisal as is alleged being after the action brought, is no plea.

Whiting vers. Sir Geo. Reynell, Cr. Jac. 657, 658.

*Escape.*

*Fresh suit.*

Debt against the Sheriff for the Escape of a Prisoner in Execution; the Defendant pleads, that the Prisoner escaped the 16th. of Dec. and that he freshly pursued him, and re-took him the 17th. of Dec. and retained him in Execution again; and thereupon it was demurred, and objected, that this was no excuse; but per Curiam the Sheriff is not liable to this action, for here the Sheriff used his endeavour, and took him again upon fresh suit, although that in the night or otherwise he might lose the sight of him. But if before he be re-taken, an action is brought against the Sheriff for the Escape, then the re-taking of him afterwards shall not avoid the Plaintiffs action, although the re-taking be upon fresh suit.

Grills vers. Ridgeway, Cr. El. 439. Tr. 2. Car. Ro. 1179. B. R. Harvey vers. Sir Geo. Reynell, accord. Trin. 13. Car. Ro. 1107. in B. R. Burford vers. Somes & Gayer, accord.

*Night.  
Retaken before the action brought.*

*The Gaoler makes fresh suit so soon as he hath notice of the Escape, and good enough.*

If a Prisoner escape out of prison by the negligence of the Keeper and is absent by a day and a night; and the Keeper doth not know this, but afterwards when he hath notice of this Escape, he makes fresh suit and re-takes the Prisoner, this is a good fresh suit, and shall excuse him.

Mich. 10 Car. B. R. Hinton vers. Sir Jo. Lenthall, Rolls tit. Escape 809

So likewise where a prisoner escaped at nine of the clock at night and was re-taken the next day immediately after notice, (*viz.*) at five of the clock in the morning, upon fresh pursuit: Et per Curiam this is a good fresh pursuit.

Elton vers. Sir Jo. Lenthall, Tr. 10 Car. in Br. Ro. 627. Rolls tit. Escape 809. Stones case, Godb. M. 8 Car.

*Reprisal upon fresh suit, a quarter of a year after the Escape.*

A Prisoner in Execution, by practice procured an Hab. Corp. to be removed before Cooke Chief Justice, at the Assizes in Lent, and then he escaped, and afterwards in Easter Term following, the Bailiff re-took him, and thereupon he brought an action of false imprisonment: And the Court was of opinion, that the fresh suit was made good, although he re-took him the next Term after the Escape, if enquiry were made after him: And by consequence it was adjudged, that the action of false imprisonment did not lye against the Bailiff.

Garnoon verf.  
Layton, cited  
in Yel. Rep. 20  
int. Jennings &  
Hartley, Cr.  
El. 706, 707.  
Bonner verf.  
Stockly, Cr.  
El. 652. ac-  
cord. & Ed-  
den. verf. Loyd  
Cr. El. 877.  
accord. Dr.  
Druries case,  
8 R. 142. b.  
Hob. Rep. 206.  
accord.

If a man be taken upon a Cap. Ucl. after Judgment, he is in Execution for the party, and if he Escape, although that he was taken at the Kings suit, yet the party hath such an interest in his body, that he shall have an Escape against the Sheriff.

When a Prisoner is taken by an erroneous Process.

There is a diversity between collateral things executory, and execution; for if a man is taken in Execution upon an erroneous Judgment, and Escapes, and afterwards the Judgment is reversed by Writ of Error, the action for the Escape is gone; for he may plead nul tiel Record, because without Record the action is not maintainable, but until the erroneous Judgment or Execution is reversed by Writ of Error; the Sheriff or Gaoler shall not take advantage thereof, for there he cannot plead nul tiel Record, because until it is reversed by the award of the Court, it remains in force, although it be manifest Error: But if the Plaintiff brings an Escape against the Sheriff, and hath Judgment and Execution thereupon, and afterwards the first Judgment is reversed, yet because that this Judgment upon this collateral thing is executed, it shall remain in force notwithstanding the reversal of the first Judgment.

Burton verf.  
Eyre, Cr. Jac.  
288, 289.

So likewise it hath been adjudged, where a Testat. Ca. sa. was directed to the Chancellor of Lancaster, that he should command the Sheriff to take the body of the Defendant, ad satisfaciend. &c. Ita quod predict. cancellarius haberet corpus def. &c. And thereupon the Chancellor commanded the Sheriff, that he should take the Defendant, ita quod the Sheriff should have him coram Justiciariis, &c. And then the Sheriff arrested the Defendant, and afterwards permitted him to Escape, for which Escape the Plaintiff brought his action, and had a verdict: And it was moved in arrest of Judgment, that the Precept directed by the Chancellor to the Sheriff, was not warranted by the Writ directed to him, for it varies from the command; for it ought to have been, that the Sheriff should have the body of the Prisoner before the Chancellor, ita quod he shall have him before the Justices; and the Warrant is that the Sheriff himself should have him before the Justices: Sed non allocatur; for per Curiam, although there be Error in the Process, the Sheriff cannot take advantage thereof, but having suffered him to Escape, he is answerable to the party.

Ognell verf.  
Baston, Cr. El.  
164, 165.

Likewise upon a Recogn. in Chancery, 2 sci. fa. being issued out and returned, several Questions did arise:

1. The first Question was, whether a Ca. sa. lay or no.
2. The second Question was, admitting the Ca. sa. was not grantable, whether it be void, or only erroneous, so as the party must avoid it either by Audita querela, or Error.
3. The third Question, a Prisoner is in prison for suspicion of Felony, whether or no he may be charged in Execution by virtue of a Ca. sa.

As to all these points the Court resolved:

1. That

The Plaintiff may bring an Escape against the Sheriff where the Defendant was taken upon a Ca. Ucl. after Judgment, and Escaped.  
Where a Prisoner is taken upon an erroneous Judgment, and Escapes, yet the Sheriff is chargeable.  
Nul tiel Record a good plea for the Sheriff.  
Sheriff shall not take advantage of Error in Process.  
If after the original Judgment is reversed, before a Judgment had against the Sheriff, the Sheriff is discharged; but if another Judgment is recovered against the Sheriff, before the first Judgment reversed, then he is still chargeable.  
Cancellarius Lancast. Escape. Precept. Variance.  
The Sheriff must not take advantage of Error in Process.  
Recogn. 2 Sci. fa. Ca. Sa.

Ca. sa. where  
it lies upon a  
Recogn. in  
Chancery.

1. That the Process was well awarded, and maintainably by Law, for it being a Debt upon Record, it is not reason but the body should be as lyable to Execution upon it, as to a common Obligation.

An Erroneous  
Writ is not void  
but voidable.  
Error.  
Sheriff.

2. To the second Question, it was resolved, admitting the Ca. Sa. lay not, yet it is not void, but erroneous: and this the Sheriff shall not dispute, nor take advantage of; for it was a good warrant for him to take the body, and false imprisonment lyeth not against him therefore.

Coyner's Sher-  
riff of Dur-  
hams case Cr.  
El. 576. accord.  
Keyfar verf.  
Tyrrel, Bulstr.  
2 R. 256 acc.

Execution may  
be executed up-  
on a prisoner  
for Felony.

3. To the third Question, it was resolved, that the Execution was well served upon him in prison, for although his body was at the Kings pleasure, yet he shall not take advantage of his own Tort, (no more shall the Sheriff) but he shall answer the action or Execution of a common person.

I shall add but one case more, 'tis a case touched upon both in Cr. Jac. fo. 3. and Yel. fo. 42. both which Books seem to differ; but I find not any resolution of this case, except in this Book only: wherein in an Action of Debt brought against a Sheriff for an Escape, the Case was thus. Upon a Recognisance acknowledged in Chancery, 2. Sci. fa. were issued out and retourned; after that there issued out a Levam fac. upon which a Nulla bona was retourned; afterwards the Plaintiff obtained a Ca. Sa. and thereupon took the party in Execution, whom the Sheriff afterwards suffered to Escape: thereupon this Action was brought.

Weaver verf.  
Clifford, Bulf.  
2 R. 62, 63, &c.

Recogn.  
2. Sci. fa.  
Levam fac.  
Ca. sa.

Escape.

Capias upon a  
Recogn.  
Sheriff chargea-  
ble.

The Book says, that the Court inclined to be of opinion, First, That that Capias did well lye. Secondly, That the Sheriff was chargeable with the Escape. But afterwards the Reporter puts it out of further dispute, for he says that Judgment was given for the Plaintiff.

Weaver verf.  
Clifford, Bul-  
str. 2 R. fo. 64.  
fo. 65.



Deus

Minimus

Magnus

# T H E T A B L E.

<b>Abjuration.</b>		For what Fines for Alienation.	
<b>F</b> Or what a man must abjure, and when	378	2 & 3 E. 6. c. 34.	65
		32 H. 8. c. 1.	<i>ibid.</i>
The penalty if he falls into a relapse,	<i>ibid.</i>	For what Fines imposed by Commissioners of Sewers,	
		23 H. 8. c. 5.	67
		7 Jac. c. 20.	<i>ibid.</i>
<b>Accedas ad Curiam.</b>		For Traitors and Felons Lands and Goods,	
Where it lies, and when,	425	25 E. 3 c. 2.	97, 93
How to be returned, vide tit. Return of Writs.		26 H. 8. c. 13.	93
		33 H. 8. c. 20.	67
		5 E. 6. c. 11.	<i>ibid.</i>
		5 Eliz. c. 1. & 11.	14
<b>Accidents.</b>		For Escheats,	
Where the Sheriff loseth a Writ by accident,	180	18 Eliz. c. 1.	67
What it the consequence thereof,		1 Jac. c. 12.	69, 93
		What Accomptants shall have their Lands liable to the payment of their Debts due to the King, 13 Eliz. c. 4.	55, 124
<b>Actions.</b>		What allowance Sheriffs shall have upon their Accounts, 1 H. 4. c. 11.	477
All Actions shall be commenced in the proper County,	97	4 H. 5. c. 2.	<i>ibid.</i>
6 R. 2. c. 2.	<i>ibid.</i>	When they shall be discharged upon their Oath,	
		5 R. 2 c. 13.	177
<b>Account.</b>		4 H. 5. c. 2.	477
What seizures Sheriffs shall be charged with,	475, 502, 503	When to Accompt,	
What they shall account for,	47 usque 93, 474, 475	5 H. 3.	474, 475
Statutes touching Accounts,		5 R. 2 c. 11.	474, 475, 479
For what Farms of Cities, Boroughs, Courts, &c.		Before whom he shall Accompt,	476, * 505
13 E. 1.	48, 49	* How eased in their Accompts, and in their Table and Servants at the Assises,	
34 H. 8. c. 16.	49	14 Car. 2. c. 21.	501, 502
14 E. 3. c. 9.	48, 49	When every Sheriff is to be sworn to bring into the Exchequer an account of all such sums which they have levied,	
1 H. 4. c. 11.	48	2 & 3 E. 6. c. 4.	476
4 H. 5. c. 2.	<i>ibid.</i>	What other persons shall be Accomptants to the King,	55, 56
2 & 3 E. 6. c. 4.	<i>ibid.</i>		
2 & 3 E. 6. c. 3+	65		

D d d d

\* How

# The TABLE.

* How Sheriffs of <i>Chester, Lanc. and Durham,</i> and the Counties in <i>Wales,</i> must account, 504		When for the default of the Under-sheriff, 175, 176, 493, 495	
Additions.		What Lands shall be charged with Amerce- ments, 64	
Additions ought to be to all Originals and In- dictments, and the reason thereof, 85		By whom the Sheriff is to be amerced, and when, 174, 180, 493, 494	
What Additions Jurors must have, 27 <i>Eliz.</i> c. 2. 315, 329, 490 39 <i>Eliz.</i> c. 8. 315		What persons shall be amerced, and who shall not, and for what offences, 62, 63	
Adjournment.		For what reason the Township shall be amerced in the Sheriffs Tourn, 386	
The form thereof, 296		Jurors in the Township shall be amerced for con- cealment, 388	
Admeasurement, vide tit. <i>Retorn of Writs.</i>		For decayed Bridges, 396	
<i>De Dower</i> , is Vicountiel and triable in the She- riffs Court, 421		In what Court, <i>ibid.</i>	
<i>De Pasture</i> , the like, <i>ibid.</i>		The Sheriff shall have the Amercements in his Torn to himself, 397, 398, 441, 442	
The manner of proceedings therein. <i>ibid.</i>		As for not doing suit and service in the Leet or Torn, 400, 401	
The Sheriff is Judge therein, 34		Upon what Amercements a <i>Moderata misericor-</i> <i>dia</i> lies, 441	
Adowson.		How they shall be offered in County Courts, &c. 62, 441	
It may be parted between Co-partners, 265		The Sheriff shall be amerced for mis-retorning, false retorning, or not retorning his Writs 175, 176, 193, 195.	
The form of a Partition, vide in tit. <i>Retorn of</i> <i>Writs.</i>		How these Amercements shall be levid, 33	
Alien.		When the Sheriff shall be amerced for an insuf- ficient retorn, 27 <i>H. 8.</i> c. 24. 177	
No Alien shall be retorned upon Juries, 313		For not retorning Writs 1 <i>E. 3.</i> c. 5. 177, 190	
But an Alien is compellable to appear at the She- riffs Tourn, and there to swear Allegiance, 388		Westm. 2. c. 39. 178, 183, 187, 190	
Statutes touching Aliens.		For not retorning Proclamtions, 1 <i>E. 6.</i> c. 1. & 10. 180, 494	
When they shall have <i>medietas lingue, &amp;c.</i> and concerning their trial.		5 <i>E. 6.</i> c. 26. 180	
22 <i>H. 8.</i> c. 10.	}	3 <i>Eliz.</i> c. 9. 180, 494	
1 & 2 <i>Ph. &amp; Mar.</i> c. 4.		6 <i>H. 8.</i> c. 4. 380	
5 <i>Eliz.</i> c. 20.		For false returns, 12 <i>E. 2.</i> c. 5. 184	
27 <i>E. 3.</i> c. 8.		5 <i>Eliz.</i> c. 23. 180, 493	
28 <i>E. 3.</i> c. 13.		6 <i>R. 2.</i> c. 4. <i>ibid.</i>	
8 <i>H. 6.</i> c. 29.		For taking bribes, 3 <i>H. 7.</i> c. 1.	
Amendments.		Amercements in County Courts.	
The Court may amend an insufficient Retorn, but the Sheriff must not, 189, * 536		For not keeping the Assise of Bread and Beer, 1 <i>E. 4.</i> c. 2. 33	
Stat. 48 <i>Eliz.</i> c. 13. 189		32 <i>H. 8.</i> c. 41. <i>ibid.</i>	
* But where a Writ is retorned <i>album breve</i> , it is void and not amendable, 536		51 <i>H. 3.</i> 63	
Amercements.		21 <i>Jac.</i> c. 21. 33	
What it is, and for what Sheriffs shall be ac- comptable in the Exchequer, fo. 61 usque 94		Where to be levid, 11 <i>H. 7.</i> c. 15. 441	
		None shall be amerced but for reasonable cause, 9 <i>H. 3.</i> c. 14. 64	
		3 <i>E. 1.</i> c. 6. <i>ibid.</i>	
		What persons shall be amerced, and for what, 20 <i>H. 3.</i> c. 4. 63	
		51 <i>H. 3.</i>	

# The TABLE.

51 H. 3.  
10 H. 3. c. 1.  
13 E. 1. c. 4.  
M. C. C. 14.  
3 H. 7. c. 1.  
52 H. 3. c. 3 & 4.  
3 E. 1. c. 34.  
When Townships shall be amerced,  
3 E. 1. c. 9.  
3 H. 7. c. 1.  
1 R. 3. c. 3.

## Annuity.

This writ is Vicountiel, and may be sued before  
the Sheriff by *Justicies*

## Appraisalment.

How to be made and when,  
When goods are over-appraised,  
Lease for years taken in Execution, and apprais-  
ed too high, what remedy, *vide Stat.* 32 H. 8  
c. 5.

## Appearance.

The manner of Appearances in the King's  
Bench, Common Bench, Chancery, and Ex-  
chequer,

The day of appearance, when it is,

\* An Appearance serves if the cause of Action  
is not expressed in the Writ, or where it a-  
mounts not to ten pounds

\* When and where the Appearance must be,

## Armour.

Worn offensively, *vide tit.* Arrest & Sheriff.

## Arrest.

What persons the Sheriff may arrest as suspected  
persons

What other persons he may arrest and who not,  
(*vide the Statutes following.*)

He may arrest Affrayors in his Town, and may  
commit them,

Where he may arrest in his County Courts,

Where an arrest by a paroll command of the  
Sheriff may be good,

He may arrest such as resist him in the executi-  
on of his Office.

A sworn Officer is not bound to shew his war-  
rant upon an arrest,

Arrest made by virtue of a warrant from the  
old Sheriff, after he is discharged, is erro-

neous,  
A prisoner may be arrested by *Capias*, although  
he be in prison by warrant of a Justice of the  
Peace,

At what time arrests may be made,  
One man must not be arrested for another,  
Statutes touching Arrests.

Sheriff ought to arrest and detain Felons.

And Night-walkers,

And servants and others that ride armed,

And Rioters and unlawful Assemblers,

When to arrest Purveyors,

Not to arrest Ministers in the Church or Church-  
yard on Sunday

\* In what case special bail is required upon ar-  
rest, and where a 40 l. Bond only serves,

\* 13 Car. 2.

Allise of } Bread,  
                  } and  
                  } Beer.

Not keeping thereof, where enquirable and pu-  
nishable.

What punishment,

Amercements for this how to be levied, *vid. tit.*

Amercements.

## Attachment.

It lies against the Sheriff for taking an exces-  
sive distress,

For not returning his Writs, and when to be  
granted,

Against the Defendant to appear at the next  
County Court upon a Replevin,

Against the party that will not deliver the Cat-  
tel upon a Replevin,

To appear upon a Writ *de proprietate proband.*

Where it lies after a Summons,  
D d d d 2

# The TABLE.

The form thereof, 154, 416, 417  
 By what the Defendant may be attached, 154,  
 155, 156, 417  
 When forfeited for not appearing, 156, 417  
 By whom to be made, 155, 156  
 Who may and ought to be attached, 155, 156  
 157  
 \* Stat. 3 E. 1. c. 9. 497  
 By pledges, 155  
 By paroll, 156  
 The time, 157  
 If not duly made it is Error, 156

## Attendance.

Sheriff and his Bailiffs are to attend upon the  
 Judges of Assise, 369  
 And upon the Justices of Peace at the Sessions,  
 372

Vide tit. { Bailiff.  
} Sheriff.

## Attorney.

In what causes he may be made, 408  
 Suit at the County Court may be done by At-  
 torney, 46, 406  
 Any person may make an Attorney in the  
 County Court, Court Baron, or other Courts,  
 407  
 And in what cases, 408  
 Vide Stat. { 11 H. 7. c. 15. } 408, 409  
{ 13 E. 1. c. 10. }

The Sheriff or any of his Officers must not be  
 Attorney. Vide tit. Sheriff, Bailiff, &  
 Under-sheriff.

## Averment.

Where averment may be against a Sheriff's re-  
 turn, and where not, 190, 191, 192, \* 542  
 If he return too small Issues, the Party grieved  
 may have it, 325  
 Yet no averment will lie against the Sheriff's re-  
 turn of a Proclamation to the Outlawry, 380,  
 When against the false return of a Bailiff,  
 1 E. 3. c. 5. 325, 461  
 13 E. 1. c. 39 461  
 \* It is no Plea against the return of the Sheriff  
 to say that he was not Terrtenant, 540

## Ancient Demesne, Vide tit. Tenant.

What Lands are ancient Demesne, 37, 38  
 To whom they belong, *ibid.*  
 The Sheriff's duty concerning such Lands, *ibid.*

## Bail and Bailment, vide tit. Obligation.

What is this 356  
 \* What persons may be sureties, 520  
 VVhat security must be taken upon an arrest,  
 422, \* 519, 520  
 \* To what Writs bail for appearance must be  
 taken, 519  
 VVhat Prisoners bailable, and what not, 356,  
 357  
 \* 13 Car. 2. 505  
 VVhat Officer may take it, 358, \* 519  
 When in the Sheriff's name, 359  
 The form of the Bail-bond, 358, 359, \* 520  
 \* One security only, and yet good, 520  
 Bail not to be taken of one in Execution, 359  
 \* 13 Car. 2. 505  
 In what cases the Sheriff is not to bail Prisoners,  
 without a Writ to that purpose, 364  
 The penalty of bailing Prisoners not bailable,  
 33, 489  
 \* 13 Car. 2. 505  
 And of not bailing Prisoners bailable, 489,  
 \* 519  
 What persons are bailable upon an *Hab. Corp.*  
 5 H. 5. c. 2. 254

## Statutes directing

When the Sheriff must bail Prisoners,  
 3 E. 1. c. 15 356, 357  
 23 H. 3. c. 10. 358, 362  
 1 R. 3. c. 3. 357  
 1 R. 2. c. 12. *ibid.*  
 \* If the cause of Action is not expressed in the  
 Writ, then an appearance serves, 505  
 What prisoners he must not bail,  
 3 E. 1. c. 15. 356  
 27 E. 1. c. 3. *ibid.*  
 4 E. 3. c. 2. *ibid.*  
 23 H. 6. c. 10. 357  
 \* 13 Car. 2. 505  
 Bail must be put in before a Writ of Error shall  
 be allowed to reverse an Outlawry,  
 6 H. 8. c. 4. 379  
 13 Eliz. c. 3. *ibid.*

## Bailiff.

He must be sworn, vide tit. Oath, 410, 453, 459  
 How many a Sheriff may have, 457  
 He must not be Attorney. vide tit. Under-  
 sheriff. 457  
 Must attend upon Judges of Assise, 369  
 And also the Justices of the Peace at their Sessi-  
 ons, 372  
 The punishment of abuses practised by Bailiffs,  
 vid. tit. Extortion. 497, 498, 499, 500  
 He

# The TABLE

He cannot execute any Writ without a warrant,  
and the authority he cannot assign over to another,  
but must do it himself, 103  
Where and when he may take *posse Com.* vide tit.  
*Posse Com.* 355, 356  
Ought not to arrest without a warrant, 111  
Yet a sworn known Officer is not bound to  
shew his warrant, 110, 111  
Must not make Attachment without a warrant,  
156  
Though a warrant be directed to two men  
jointly to arrest one, yet one alone may execute it,  
104, 118  
Is bound to take notice of what goods he takes  
in Execution, or what person he arrests, 146,  
151  
Vide tit. Inquisition.

## Bailiffs of Franchises.

By whom appointed, 459  
Their office and authority, 459, *usque* 462  
What persons they are to be, 461  
What Fees, &c. vide tit. *Fees*. 460  
What Writs they are to return, 461  
Must endorse their names to their Returns,  
12 E. 2. c. 25. 188  
May not seize Felons goods before conviction,  
464  
By whom punishable, and for what,  
Statutes touching Bailiffs. *ibid.*  
Not to suffer prisoners to escape,  
5 E. 1. c. 4. 484  
13 E. 1. c. 14. *ibid.*  
What security he is to give,  
23 H. 6. c. 10. 368  
Must attend upon the Judges,  
27 H. 8. c. 4. 367, 369  
27 H. 8. c. 24. 461

## Bailiff of a Hundred.

What he is, and why so called, 457  
What persons shall be Bailiffs of Hundreds,  
9 E. 2. *de Livc.* }  
2 E. 3. c. 4. }  
4 E. 3. c. 9. } 458  
5 E. 3. c. 4. }  
14 E. 3. c. 9. }  
Not to let their Hundreds to Farm,  
23 H. 6. c. 10. 458  
5 & 6 E. 6. c. 16 *ibid.*

## Bailiffs of Liberties.

May bail Prisoners.  
23 H. 6. c. 10 460

Return Writs to the Sheriff by Indenture,  
12 E. 2. c. 5. 460  
Shall be amerced for an insufficient Return,  
2 H. 5. c. 8. 461  
5 H. 5. c. 5. *ibid.*  
Not to return any of his Servants upon Juries,  
23 H. 6. c. 10. *ibid.*  
Must receive Felons,  
4 E. 3. c. 10. 464  
28 E. 1. 465, 469, 483  
If he will not grant a Replevin, the Sheriff must,  
52 H. 3. c. 21. 462  
3 E. 1. c. 17. *ibid.*

## Bankrupt, vide tit. Sheriff.

## Barons.

No Barons shall be returned upon Juries, 312  
When they ought to come to the Sheriffs Tourn,  
and when not, 386

## Barretors.

To be punished by the Sheriff,  
3 E. 1. c. 23. 31  
3 E. 1. c. 32. 407

## Bishop.

Their forfeitures for not making Returns of  
Proclamations, 180  
And for not proclaiming Exigents, 380  
When bound to award a *Jure Patronatus*, 181  
When to appear at the Sheriff's Tourn, and when  
not, 386  
What Writs to be directed to them, and what  
Certificates to make, 100, 111, \* 537  
An Inquisition out of the Arches, is no Return  
to one of the King's Writs, 166  
Bishop of *Durham* is to make a Deputy in all  
Courts of Record at *Westminster*,  
31 Eliz. c. 9. 456  
\* A Bishop is but a Servant to the Court, to  
make Returns, 537

## Bond, vide tit. Obligation.

## Bridges.

To execute all Procefs or Precepts of Justices of  
Peace, for the repair of decayed Bridges,  
Stat. 22 H. 8. c. 5. 373

## Capias.

A *Capias ad respondend.* nor *Capias ad satisfac.*  
doth not lie in the Sheriffs Court, 244  
Where

# The TABLE.

Where and against whom a *Capias* lies, 104, 105  
 The several sorts of *Capias*'s, 158  
 When to issue out, *ibid.*  
 What persons may be arrested by *Capias*, 159  
 Vide tit. Arrest & Execution.

## Cerciozari.

It lies to remove a Record out of a Court of Record, 405  
 What Certificates the Bp. is to make, 100, 101  
 Where to certify a Riot, vide tit. Riot.

## Challenge, vide tit. Juroz.

## Clerks of the Market

He may hold Court, and make Process to the Sheriff to return Juries before him, 377

## Clerks and Clergy.

What Clerks may be returned upon Juries, 312, 313  
 Clergy-men have no voices to elect Parliament men, 334  
 When to appear at the Sheriff's Tourn, and when not, 386  
 Where their Cattel are distrainable for the King's Debts 54  
 What privilege they and their Servants are to have at their Convocations  
 8 H. 6. c. 1. 105

## Commissions and Commissioners.

The several Commissions of the Judges of Assise, 369  
 Commissioners of Sewers, vide tit. Sewers, & fo. 374  
 Commissioners upon the Statute of Bankrupts have authority to command Sheriffs, &c. to attend upon them, 13 E. 1. c. 7. 375  
 So likewise he is to attend upon Commissioners to take Accounts, *ibid.*  
 So also upon Commissioners for the Subsidy, *ibid.*  
 Commission may be granted to the Sheriff to enquire of Bridges, Walls, Trespasses, &c. 399

## Common and Commoners

What remedy they have against him which surcharge. 283

## Conditions, vide tit. Bail, & Obligation.

Of a Sheriff's Bond for appearance, 365  
 To return Goods upon a Replevin, 366, 440

To appear before the King and Council, 166  
 In the Common Pleas upon an Exigent, 367  
 At the Sessions of the Peace, *ibid.*  
 To be a true Prisoner, *ibid.*  
 To appear in the King's Bench, and for good bearing, 368  
 To perform Covenants, (vide tit. Under Sheriff) 450  
 To pass an account, and procure a discharge for the Sheriff, *ibid.*  
 For a Bailiff to enter into, to the Sheriff, *ibid.*  
 To exercise a Bailiwick, 452  
 For a Gaoler to keep his Prisoners safe, *ibid.*  
 \* Where the Writ and Condition differ in the day, when the appearance is to be, 523  
 See for this in tit. Obligation & Bail.

## Constables.

High-Constables and Petty-Constables, where chosen, 400

## Conventicles.

\* The monies levied upon the goods of Conventiclers, to be paid in to the Sheriff, \* 22 Car. 2. 501

## Copp-holds.

Copp-hold Lands not extendible, 136  
 Vide tit. Executions.

## Coroners.

Where chosen, and how, 443, 444  
 His Oath, 443  
 What he is to do by virtue of his Office, 443, 444  
 Is not to be returned upon Juries, 313  
 Is to assist the Sheriff in the execution of a Writ of *Redisseisin*, 348  
 May by his Precept command the Sheriff to summon a Jury for them, 376  
 No Sheriff, Coroner, &c. may hold pleas of any Felony, Lands or Trespasses, *vi & armis.* 377  
 When Writs are to be directed to the Coroners, 96, 97, 98, 99  
 He ought to sit in the County Court, 405

## Covin.

In the Sheriff, how punishable, 98  
 Vide Stat. 11 H. 6. c. 2.

## Counties.

Palatine, which and how many they are, 2  
 Corporate, which and how many, *ibid.*

## Courts.

# The TABLE.

## Courts.

How many Courts the Sheriff hath,	384, 385
The Hundred Court, when to be kept,	384
Who shall be Attendants thereunto,	<i>ibid.</i>
Of what it shall hold plea,	<i>ibid.</i>
Who Judge thereof	<i>ibid.</i>
The County Court, the nature of it, and its extent,	385, 404
To whom it belongs,	404, 406
When to be kept, and where,	35, 405, 413
It is no Court of Record,	440, 441, 442, 443
The stile of the Court,	414
Who is Judge there,	406
The High-sheriff himself ought to sit there,	405, 424
The Coroner ought to sit there,	405
The forms of all the Proceſs in the County Court,	416, 417, 418, 419, 420, 421, 424, 434, 437, 438, 442
Preſidents for Declarations and Pleas there.	429, 430
Of what Actions it will hold plea by Juſtices,	410, 411, 412, 413, 420, 421, 422, 423, 424, 427, 429, 430, 435
Of what Actions by Plaint,	24, 25, 410, 411, 412, 413, 325, 427, 428, 423, 430, 427
When this Court is ouſted of Juriſdiction by pleading,	412, 413, 425, 426, 432, 440
There Knights for the Parliament are choſen,	443
There Coroners and Verdors are choſen,	<i>ibid.</i>
What Proclamations are to be made there,	444
Effoines when to be caſt, vide tit. <i>Effoines</i> .	
No Proceſs can thence iſſue againſt the body of any man,	419
In what caſes the writ <i>de Executione Judicij</i> lies in this Court,	420
What Courts may impoſe Fines, &c. for contempt, 33 <i>H. 8. c. 39.</i>	74
The Sheriffs Torn, vide tit. <i>Torn</i> .	

Debts due to the King, vide tit. *King*.

## Declarations.

In the County Court, the ſeveral ſorts of them	429, 430
--	----------

## Deodands.

What they are, and who is to have them,	81
---	----

## Deputy, vide tit. *Underſheriffs*.

Who may make a Deputy, and who not,	3
-------------------------------------	---

What Deputies, and where.

Vide Stat. 23 <i>H. 6. c. 10.</i>	20, 439
How many Deputies to grant Replevins,	
Stat. 1 & 2 <i>Ph. &amp; Mar. c. 22</i>	20

## Disceit.

Where it lies for returning too little iſſues,

Stat. { <i>Westm. 2. c. 39.</i> }	323, 324, 325
1 <i>E. 3. c. 5.</i> }	

Discharge, vide tit. { *Writs,*  
*Quietus.*

When the Sheriff hath levied the King's Debt, he ought to diſcharge the Debtor,

Stat. { 3 <i>E. 1. c. 19.</i> }	52
13 <i>E. 2.</i> }	

\* A Priſoner in Execution may be diſcharged by paroll only, 533

## Distress.

Grand diſtreſs in real Action, is given by the Statute of 57 *H. 3. c. 7 & 8.* 157

The Sheriff may diſtrein for an Amercement in his Torn, 401

Diſtreſs lies in the County Court, 421

Where he may diſtrain for an Amercement in his County Court 442

He cannot break open a Door to diſtrain, 49

When a diſtreſs may be ſold, 52, 55

By what Cattel they ſhall diſtrain, 52, 54

It muſt be reaſonable, *ibid.*

Where puniſhable for taking wrong or exceſſive diſtreſſes, 491, 492

Where it ſhall not be delivered by leſs than four Manucaptors, 417, 418

When it is forfeited, 418, 419

It muſt be taken by a ſworn Officer, 458

Statutes touching Diſtreſſes

Not to be taken by ſtrangers, 13 *E. 1. c. 37.* 498

Where Cattle diſtrained ſhall be put, 1 & 2 *Ph. & Mar. c. 12* 431

What Cattle diſtrainable, 51 *H. 3.* 54

52 *H. 3. c. 4.* *ibid.*

28 *E. 1. c. 12* *ibid.*

How far to be driven for the King's Debt, 51 *H. 3.* 55

8 *R. 2.* *ibid.*

11 *H. 4.* *ibid.*

When to be delivered upon ſufficient ſecurity, 53

When the Sheriff may diſtrain for the King's Rents and Duties 40, 54

Diſtringas.

# The TABLE.

## Distringas.

The nature of it,	160, 161
When to issue out,	<i>ibid.</i>
Who shall be distrained,	161

## Elegit, vide tit. Inquisition. Execution.

* How Elegits and Extents to be executed,	531
* Executed by a Serjeant at Mace,	<i>ibid.</i>
* By a Bailiff of a Liberty,	<i>ibid.</i>

## Enditment.

If the Sheriffs return shall serve for an Enditment,	192
What Enditments may be found in the Sheriffs Torn,	389, 390, 391, usque 395
They must be certified at the next Sessions,	398
Enditments for Riots,	30, 31

## Enquest.

In the Hundred Courts,	388
In the Sheriffs Torn,	389
What they are to enquire of,	382, 392, 393
	394, 395
When sufficiently taken,	390

## Error.

When Execution shall be staid by Writ of Error	129, 848
Error in Process vide tit. Process, & Sheriff.	
* It is error to proceed after a Superfedeas,	533
* What the Sheriff may do with a Prisoner taken upon an erroneous Process,	563

## Escape.

What shall be said to be an Escape, and what not	17, 139, 140, 141, 142, 485, 486
Who chargeable with Escapes,	466, * 517
What Escapes shall charge the Sheriff,	485
It is an Escape in the Sheriff to let any Prisoner to bail, which is not bailable,	140, 356
Or take a bond of one in Execution to appear,	359
If a Prisoner Escape wrongfully, the Sheriff may re-take him; but if permissively, he may not,	113, 139, 150, 141, 142
He ought at his peril to take notice of all Writs against any of his Prisoners,	114

## Statutes touching Escapes,

He must not levy any money for the Escape of a Felon, untill ordered by the Court,

13 E. 1. c. 14.	484
51 E. 1. c. 4.	<i>ibid.</i>

The penalty for suffering Prisoners to Escape,

1 R. 2. c. 12.	<i>ibid.</i>
7 H. 4. c. 4.	<i>ibid.</i>

Who shall be chargeable for the Escape of Prisoners out of the Gaol,

14 E. 3. c. 10.	482
19 H. 7. c. 10.	<i>ibid.</i>
Westm. 2. c. 11.	486

What shall be said to be an Escape,

1 R. 2. c. 12.	485
7 H. 4. c. 4.	<i>ibid.</i>

\* For what Prisoners the new Sheriff is chargeable, and where the Old Sheriff only,

\* Where the Sheriff shall be chargeable with an Escape, and where the Bailiff,

\* What shall be adjudged an escape in Law,

\* How the Sheriff may discharge himself by act in Law,

## Escheator and Escheat, vide tit. Forfeiture, Sheriff.

Sheriff is bound in some things to execute Escheators Precepts,	375
The Sheriff is to return his Enquests,	376
For what things he is accountable,	40
When the King shall have the Escheat,	67,
	68, &c.
How Escheates may happen to the King,	93
What Lands shall be forfeited, and for what offences,	93, 94

## Statutes touching Escheats.

The Sheriff may lease them,	
51 H. 3. c. 48.	51
When the King shall have it,	
7 Eliz. c. 1.	11, 14
8 Eliz. c. 1.	67
7 E. 6. c. 16.	68
Of all houses in London,	
49 E. 3. c. 5.	93

## Essoine.

What it is,	414
The form of the entering the same,	414, 415
When the Defendant may be Essoined in the County Court,	414, 415, 435
For how longtime,	<i>ibid.</i>
	None

# The TABLE.

None shall swear to warrant to his Effoin, 415  
 There shall be but one Effoin after issue joyned,  
     52 H. 3. c. 13.  
     31 E. 1. c. 27.

**Estreats, vide tit. Forfeiture.**

How they are to be proclaimed,  
     Stat. 27 H. 8. c. 7. 79

**Estreats & Estreats, vid. tit. } Amercement,  
   } Sheriff,  
   } Distress.**

What he is, and his Office, 480, 481  
 The form of Estreats, 329  
 The Estreats shall be delivered into the Exchequer yearly, 67, 328  
 Shall not be levied without warrant, 328  
 Not to be levied but upon a right person, 329  
 Estreats defective, *ibid.*  
 Out of the County Court when to be levied, 409

Statutes touching Estreats.

By whom to be levied,  
     14 R. 2. c. 11. 329  
 Defective,  
     7 H. 4. c. 3. *ibid.*  
 To be delivered into the Exchequer,  
     51 H. 3. 328  
 They ought to be shewed sealed to the party indebted,  
     42 E. 3. c. 9. 53, 64  
     7 H. 4. c. 3. *ibid.*

**Excommunication.**

Is a Writ which prohibits waste to be committed,  
     294

**Excommunicat. cap.**

After a *Non est inventus* returned, there goes out a *Cap.* with Proclamation giving the party Excommunicated a certain time to come in and render himself, 381  
 By whom to be certified, 101

**Executions.**

In case the Sheriff executes Executions, and makes no Returns, how punishable, 179  
 What he may do in the executing of an Execution, 116, 119, 350, 351, 352, 354  
 By *levari facias*, 144  
 Upon Lands, 119 usque 136, 350, 352, \* 530, \* 531

\* What Lands shall be delivered in Execution, 532

Upon Goods, 116, 119, 120, 121, 122, 125, 127, 144, 145, 146, 147, 148, 350, 351, 353  
 \* Sale by the Old Sheriff, and good, 516  
 \* VVhat he may do upon Execution against Goods, 529, 530, 556  
 Upon the Body, 119, 120, 121, 138, 139, 140, 141, 142, 143, 144, 351, 352, \* 530  
 The several sorts of Executions, 119  
 VVhere there shall be a Re-extent, 136  
 VVhat Executions are final, 138, \* 531  
 When the Lands are over-praised, 130  
 What Returns are good to a *Fieri facias* against Executors, 167

Statutes touching Executions.

Fraudulent Conveyances shall not avoid an Execution,

50 E. 3. c. 6,  
 1 R. 2. c. 9.  
 2 R. 2. c. 3.  
 3 H. 7. c. 4.  
 13 Eliz. c. 5. & 7. } 127

Where it shall be although the Defendant dies in Prison,

21 Jac. c. 24. 129, 139

By Elegit,  
     13 E. 1. c. 18. 134, 135, 136, 137

When the Body shall be subject to Execution,  
     52 H. 3. c. 23. 144  
     13 E. 1. *ibid.*  
     51 E. 1. c. 1. *ibid.*  
     25 E. 3. c. 17. 143, 144, 159

Where Lands are liable to it,

Westm. 2. c. 18. 147  
 13 E. 1. de Merc. 144  
 27 E. 3. c. 9. *ibid.*  
 23 H. 8. c. 6. *ibid.*

Upon a Recognizance, how to be sued,  
     Westm. 2. c. 18. 133

\* Execution executed the same day that the Writ of Discharge came to the Sheriff, 517

\* What Executions are well executed, although never returned, 542

\* What Executions are of no effect, until they are returned, 543

\* The Sheriff upon a *Fieri facias* may sell Corn growing, 556

\* But Grass he cannot, *ibid.*

**Executors.**

Where an Action of Debt lies against the Sheriffs Executors, and where not, 517

E e e e      **Exigents.**

# The TABLE.

Exigents.		Falsc Judgment.	
Where to be proclaimed,	385	Where this Writ lies,	427
How often to be proclaimed, &c.	375, 376	Fees, vide tit. Sheriff, Extortion.	
Of Exigents in <i>Wales, Durham, Lancaster, &amp;c.</i>	380	What Fees, allowances and avails are due to the Sheriffs and their Officers,	467 usque 474 * 525, * 526
When to issue out,	159	* An Exposition upon the Statute touching Fees	525, 526
Expositions.		He must receive all Writs without Fees	
County	1	2 E. 3. c. 5.	469,
Shire	1, 35	The Tables of their Fees,	
Sherive	4, 35	23 H. 6. c. 9.	469, 470, 489
Purpresture	48	25 H. 6. c. 10.	471
Affairs	ibid.	34 H. 8. c. 26.	ibid.
Amercement	61	29 Eliz. c. 4.	ibid.
Flotfarn	90	Of the Sheriff of <i>Wale</i> , vide tit. <i>Wales</i> .	
Of the word Jetfarn	ibid.	* For bringing up Prisoners upon <i>Hab. Corp.</i> how to be secured, and by whom to be allowed,	
Lagan	ibid.		506
Perner	151	* 17 Car. 2. c. 10.	ibid.
Veior	ibid.	* A promise to pay Fees is within the Stat.	527
Totting	478	* No Fees due for executing or breaking up a <i>Cap. Utl.</i>	ibid.
Nihilling	ibid.	* See the Chapter throughout,	525, 526, &c.
Garnishment	ibid.	* Where the New Sheriff shall have the Fees for an Extent made by the Old Sheriff,	517
Guildable	185	Fines, vide tit. Amercements.	
Extents, vide tit. Executions.		The several significations thereof,	64, 66
Extortion.		Difference between Fines and Amercements,	64
What is Extortion in Officers,	430, 467 usque 474, 489, 499,	For what Fines the Sheriff is accomptable,	65
How to be punished,	467 usque 474, 489, 499, 500	Fine and ransom for being Outlawed at the Kings suit,	86
Where it is Felony,	489	The Clerk shall Estreat them annually, and deliver them into the Exchequer,	
Statutes touching Extortion.		13 Eliz. c. 9.	67
The punishment of Officers for taking Extortion,		Force.	
7 H. 4. c. 3.	500	Where the Sheriff may enter by force.	
23 H. 6. c. 8, 9, & 11.	499	The Sheriff may break open the house to deliver the possession upon an <i>habere facias possessionem</i> ,	350, 351, 352
11 H. 7. c. 15.	ibid.	But upon a <i>Capias ad satisfac.</i> he cannot,	350
27 Eliz. c. 7.	ibid.	If the party be once in custody, and escapes into a house, there upon a fresh pursuit the Bailiff may take him again,	351, 352
And also of the Sheriff,		The Sheriff upon a Commission of Rebellion, may break open the doors by force,	353
20 E. 3. c. 6.	467	So also upon the Statute of Bankrupts, the Commissioners have the like authority.	ibid.
1 H. 4. c. 11.	ibid.	No	
For taking Money to excuse a Juror,	468	Fairs, vide tit. Franchises.	
Or for the omission of an arrest,		Falsc Imprisonment.	
23 H. 6. c. 10.	469, 492	It lies against the Sheriff if he detain a prisoner after a <i>Super sedens</i> ,	489
* What excuses him from Extortion,	526, 527		

## The TABLE.

No House ought to be broke open in the night upon any of these pretences, 353  
 He ought not to break a house to deliver possession upon an Injunction out of Chancery, *ibid.*  
 What he may do to make a Replevy, *ibid.*  
 Upon an Outlawry, 353, 354  
 Where he shall take *posse Comitatus*, 354, 355  
 He is to assist the Justices of the Peace in the suppressing of a force, 372

### Forfeitures.

For Treason, Felony, and all other criminal offences, 76, 68, 69, *usque* 78  
 To be seized by the Sheriff, 33 *H. 8. c. 20.* 67, *usque* 78  
 Where Goods and Chattels shall be forfeited, 73, 75, 76 and so forward to 156  
 What VVaifs and Estrays are forfeited, and when, 78, 79, 80, 81, 92  
 To whom, 7, &c.  
 What Felons Goods are forfeited, 80, 81  
 What Chattels are forfeit to the King for surcharging of Common, 285  
 VVhat wreck of the Sea, 88, 89, 90, 91, 92  
 What Escheats, 93, 94  
 Ideotes likewise, 94, 95  
 What Treasure trove, 87  
 After Outlawry for Felony, Stat. 25 *E. 3. c. 14.* 74  
 But if the party appear to the Endictment, then there is no forfeiture till conviction, Stat. 1 *R. 3. c. 3.* 74, 75, \* 548  
 Statutes touching forfeitures for Treason.  
     25 *E. 3. c. 2.* 67, 93,  
     21 *H. 8. c. 11.* 78, 81  
     26 *H. 8. c. 13.* 93  
     33 *H. 8. c. 20.* 67  
     5 *E. 6. c. 11.* *ibid.*  
     5 *Eliz. c. 1.* 11, 14  
     18 *Eliz. c. 1.* 67

### Forrest and Forresters

The manner of making a Forrest, 248  
 Forresters shall not be returned upon Juries, 312  
 Justices of Forrests, when to hold their Sessions, Stat. 32 *H. 8. c. 35.* 199

### Franchise.

No Franchise to be allowed where the King is a party, 177, 181, 186  
 Bailiff of a Franchise is to deliver his Returns to

the Sheriff by Indenture, and the Sheriffs punishment for altering thereof, 183, 184  
 The Sheriff cannot grant or assign his warrant, to hold plea upon a *Justicies*, to the Bailiff of a Franchise, or any other, 424  
 To whom Franchises do belong, 39, 44  
 VVho hath the custody or power of Franchises, 39, 44  
 When they shall be said to be forfeited, 41, 43  
 Where to be allowed, 42, 43  
 When the King is bound by it, 42  
 Where the Sheriff is to take no notice of it, but bound to enter it, 121, 462, 463, 464  
     13 *E. 1. c. 39.* 186, 276  
     *Marl. 21.* *ibid.*  
     52 *H. 3. c. 21.* 269  
 If he will not make a Replevy, the Sheriff must  
     52 *H. 3. c. 2. 1.* 462  
     3 *E. 1. c. 17.* *ibid.*

### Fraud, vide tit. Executions:

Fraudulent Conveyances shall not avoid Executions, 127

### Fresh suit.

\* VVhere Fresh suit shall be well made, and how the Sheriff shall be discharged thereby, 562

### Goaler, & Goal vide tit. Sheriff

VVho is to have the custody of the Goal, 5  
 By whom a Goaler is punishable, and for what, 548  
 His duty, 465  
 His Authority, and what he may not do, 465, 466, 467

### Statutes touching Goalers.

He must receive Felons and keep them without fees,  
     4 *E. 3. c. 10.* 464, 465, 469, 483,  
     28 *E. 1.* 465  
 And make Certificate of the Prisoners at the next Goal-delivery,  
     3 *H. 7. c. 3.* 464, 465  
 Felons and Murderers shall be imprisoned in the County Goal,  
     23 *H. 8. c. 2.* 465  
 He must not make his Prisoners become approvers,  
     14 *E. 3. c. 10.* 464, 466  
 Action lies against him for an Escape,  
     *Westm. c. 2. 11.* 486  
     Eccc 2      Garnish.

# The TABLE.

**Carnishment, vide tit. Summons.**  
 What it is, and from whence derived, 278  
 Where it ought to be, *ibid.*  
 How to be in a *Præcipe quod reddat*, 268

**Guildable.**  
 What it is, 185

**Habeas Corpus.**  
 When to allow it, 166  
 What Return good, *ibid.*  
 By whom to be signed, 251  
     Stat. 1 & 2. *Phil. & Mar. c. 14.* *ibid.*  
 \* Every person committed by warrant from the  
     King, Council Board, &c. upon motion shall  
     have his *Hab. Corp.* 506  
 \* 17 *Car. 2. c. 10.* 506

**Heretick vide tit. Absuratiou, Ordinary**  
 Who shall be judged an Heretick, 378  
     Stat. 1. *E. 6. c. 12.* *ibid.*

**Hue and Cry, vide tit. Stat.**  
 How and in what manner, and when to be  
     made, 11, 12

**Indemptitate Rominis.**  
 What it is and when, and where it lies. 85  
     37 *E. 3. c. 2.* 368  
 When and where the Sheriff shall be charge-  
     able, and what Return he may make, 112  
     113

**Ideot.**  
 The manner of finding Ideocy, 94, 95  
 Who shall have the custody of them and their  
     Lands, 94, 95  
     Stat. 17 *E. 2. c. 9.* 95  
 VVhat person shall be said to be an Ideot, *ibid.*

**Indentures.**  
 Upon a Writ *De secunda superoneratione*, the  
     Sheriff must return Indentures between the  
     Jury and himself, 284  
 The form of the Indenture for Knights of the  
     Parliament, 336, 338  
 For Citizens and Burgeses, *ibid.*

Endictments taken at the Sheriffs Torn, must  
     be Indented, 389, 390  
 The form of the Indenture between the High  
     and Under-sheriff, 445, 446, 447, 448,  
     449, 451, 452 :  
 What Prisoners he is to take by Indenture,  
     15, 16  
 The form thereof for setting over Prisoners and  
     Writs between two Sheriffs, 18

**Infant.**  
 No Infant shall be returned upon Juries, 313  
 He may be Outlawed, 167

**Inholders.**  
 For what offences punishable, and where, 401

**Inquisition.**  
 Execution be *Elegit*, ought to be by Inquifi-  
     tion, 134  
 What the Sheriff may do in executing of an  
     Inquisition, 134  
 Inquisition, by the Sheriff upon the execution of  
     a *Fi. Fa.* 146  
 \* Inquisition taken the same day on which it  
     was returnable, and good, 534  
 † Taken by the Bailiff of a Liberty, and good,  
     *ibid.*

**Issues.**  
 What Issues, to be returned upon Jurors, 289  
 And when, 164, 490  
     Stat. 2 *R. 3. c. 13.* 326  
 When the Tenant or Defendant shall lose Is-  
     sues, 323  
 How much they shall be, 59, 324  
 What Issues the Sheriff must return upon Ju-  
     rors, 58, 325, 326, 490  
 In Attaint, 336  
     Stat. 15 *H. 6 c. 9.* 327  
 In London upon a Force, *ibid.*  
     Stat. 8 *H. 6. c. 9.* *ibid.*  
 Upon a Riot, *ibid.*  
 If twelve appear, on Issues, *ibid.*  
 How to be levied, 59, 73, 328, 490  
     27 *E. 1. c. 2.* 328  
     43 *E. 3. c. 9.* *ibid.*  
 Where charged upon the Land, 329  
 Upon a Purchasor, 330  
 Upon Issue in Tail, *ibid.*  
 Upon him in Reversion, *ibid.*  
 Upon a Woman, *ibid.*  
 Upon a Successor, *ibid.*  
 Upon a Lessee, *ibid.*  
 Upon a Stranger, *ibid.*  
 Upon

## The TABLE.

Justices.

# The TABLE.

**Justices.**  
 In what case, and for what matters a *Justices*  
 may be granted and sued before the Sheriff,  
 421, 423, 424, 427, 435  
 The form thereof, 423  
 The Plaintiff may count to any damage here-  
 upon, 424  
 What Process may be awarded thereupon, *ibid.*  
 Plea upon this Writ must be held before the  
 Sheriff himself, *ibid.*

**Calendar.**  
 The form of it, 370, 371  
 The Sheriff ought to deliver one to the Judges  
 at every Goal-delivery, 370  
 The penalty for not doing of it, *ibid.*

**King. vide tit.** { *Escheat,*  
*Discreet,*  
*Prerogative,*  
*Sheriff,*  
*Forfeiture,*

What persons and lands shall be chargeable and  
 liable to pay to the King the Debts due to  
 him, 55, 56, 57  
 Obligations taken to the Kings use, and in his  
 name, shall be of the force of Statutes Staple.

Stat. 33 H. 8. c. 39. 121  
 What Waifs, Estrays, Forfeitures, &c. the King  
 is to have, vide tit. *Forfeitures.*  
 The King shall have all Royal Fishes, as Stur-  
 geons, &c. 92  
 Hath the disposal of Ideots & Lunaticks, 54, 95  
 What Escheats he shall have, 93, 94  
 Debts and Judgments to the King, shall be paid  
 and Executed before Subjects,  
 9 H. 3. c. 18. 5, 124, 357  
 33 H. 8. c. 39. 53, 57, 124  
 Although his Debtors Lands come into the pos-  
 session of another, yet they shall be chargea-  
 ble, Stat. 33 H. 8. c. 39. 55  
 Of the Kings death, 17

**Knights.**  
 Of the Parliament, where chosen, 443  
 Their Wages, vide tit. *Wages.*

**Leets.**  
 From whence derived originally, 384

If a Leet be within a Torm, at which Court the  
 Suitors must appear, 387, 401  
 What things inquirable there, and the nature  
 of it, 396  
 VWho, and when to do suit there, 45

**Lep gager.**  
 Before whom to be made, 427, 428  
 Who may wage Law, and who not, *ibid.*  
 How to be made in the County Court, 427  
*Mag. Chart. c. 28* *ibid.*

**Lunaticks.**  
 VWho shall have the disposal of their Estates, 95  
 Stat. 17 E. 2. c. 10. *ibid.*  
 VWhat persons shall be said to be Lunatick, *ibid.*

**Non ponend, in Assis.**  
 VWho shall have it, 312

**Non suit.**  
 A *Pone* comes too late to remove a cause after  
 Non suit, but a *Recordare* will remove it not-  
 withstanding, 269  
 In Replevin, when, 425

**Nusans.**  
 VWhere inquirable, 394, 396  
*Justices de Nusans* in the County Court, where  
 it lies, 422

**Oath.**  
 The Sheriffs Oath, 9, 10  
 VWherein the Sheriffs Oath ought to be amend-  
 ed, 377  
 \* See several Observations upon the Oath, 509,  
 510  
 The Coroners Oath, 443  
 The Verdors Oath, 444  
 The Oath of Supremacy concerning his Office,  
 9, 10  
 1 Eliz. c. 1. 9  
 5 Eliz. c. 1. *ibid.*  
 Before whom to be taken, 13, 14  
 The Oath of Allegiance, 453  
 3 Jac. c. 4. 15  
 7 Jac. c. 6. *ibid.*  
 The High-Sheriffs Oath to pass his account, 475  
 Before whom to be taken, 453, 454  
 Every

# The TABLE.

Every Under-sheriff, Bailiff of liberty, Deputy and Clerk, shall take two Oaths, and the forms thereof,

Stat.	11 H. 7. c. 15.	454
	27 Eliz. c. 12.	457
	1 Eliz. c. 1.	453
	5 Eliz. c. 1.	ibid.
	7 Jac. c. 6.	454

Before whom to be taken,

27 Eliz. c. 12.	453
-----------------	-----

The penalty for the breach thereof,

27 Eliz. c. 12.	453, 454
-----------------	----------

Obligation, vide tit. Bail, Condition.

The form of the Sheriffs Bond for an appearance,

358, 365, 368, \* 520, \* 521

By whom to be taken,

358, 460, 519

When to be taken to the Sheriff only,

359, 460, \* 522

If made by a Stranger, it is void,

359, \* 520

e con.

Bond to pay money upon a *Fi. Fa.* good,

359, \* 524

When Bonds are well taken, and when not,

359, 360, 361, 362, 363, \* 520, \* 523

How to avoid Bonds taken contrary to the Statute of 23 H. 6.

364, \* 522, \* 523

The form of a Sheriff's Bond in a Replevin,

440

If entred into to the King, is of the same force with a Statute,

53, 124

Stat. 33 H. 8. c. 39.

53, 123

Bond taken by Gaolers for true imprisonment is void,

466, \* 524

\* The Statute of 23 H. 6. c. 10. and an Exposition thereupon,

517, 518, &c.

\* With what penalty a Bond for appearance may be taken.

521

\* When they are taken *colore officii*,

521, 522

\* Where the Bond is deficient, and when it enjoyns more than the Statute requires,

523

\* A Bond taken by the Sheriff for the payment of his Fees, is void,

524

\* So likewise for meat and drink, &c.

ibid.

\* Obligation taken upon a Process, issuing out of a Court which had no authority to grant it, how to be avoided,

521

Office.

Where the King shall be entituled without Office,

40

Officers, vide tit. { Sheriffs,  
Bailiffs,  
Coroners.

Matters specially relating to an Under-sheriff, Clerks, Bailiffs of Hundreds and Gaolers,

445, 446, 447, &c.

Clerk of the Pipe, what he is, and his Office,

479

Matters relating to the Exchequer Officers,

480, 481

To what things the Clerk of the Pipe shall be sworn,

Stat. 5 R. 2. c. 14. 479, 489

Ordinary

The Sheriff is bound by oath to assist the Ordinary for the suppression of Heresies, &c.

377

Ought not to deliver an Heretick to be burnt, without the King's Writs

378

Original { Summons,  
Writs,  
Attachments.

Outlawries.

By whom pronounced,

405

All Outlawries against the Statutes following, shall be void by averment,

6 H. 8. c. 4. 86

31 E. 1. c. 3. ibid.

He which will defeat an Outlawry must render himself to prison,

87

Stat. 5 E. 3. c. 13. ibid.

He which will defeat an Outlawry, must render himself to prison,

87

Stat. 5 E. 3. c. 13. ibid.

Outlaw'd persons do lose the profits of their Lands, vide tit. Forfeiture, & Proclamations.

Pannels.

By whom to be made,

311

For the Assizes, ought to be six dayes before the Assies

489

42 E. 3. c. 11. 309

6 H. 6. c. 2. ibid.

And to give thereof Copies, if desired,

489

Pardon.

\* The penalty of any Officer, &c. that shall go about to trouble any person pardoned by the Act of general pardon,

508

\* 12 Car. 2. ibid.

\* Fines, Issues and Amercements, &c. levied by Sheriffs &c. are not pardoned,

508

\* 12 Car. 2. ibid.

Parliament.

The manner of returning Knights and Burgesses,

330, 331

11 H. 4. c. 1. 332, 333

6 H. 6. c. 4. 331, 332

Th

c

# The TABLE.

The manner of electing Parliament men,  
 Stat. 7 H. 4. c. 15. 331, 332  
 Who shall be Electors, 332, 333, 334  
 Who shall be Burgesſes, and how to be re-  
 turned, 335  
 What Burroughs ſend Burgeſſes to Parliament,  
 and how many, 338, uſque 343  
 Their Wages, and how to be aſſeſſed and levyed,  
 23 H. 6. c. 11. 344, 381  
 12 R. 2. c. 12. 344  
 34 H. 8. c. 24. 345  
 35 H. 8. c. 11. *ibid.*

## Partition.

Of what things it may be made, 265  
 How it ſhall be made, 32 H. 8. *ibid.*  
 \* If made by Writ, it ſhall ſtand good although  
 there be inequality. 541  
 \* As to part the Sheriff returns that the Jurors  
 would not aſſiſt him, 541

## Patent.

Where the Sheriff's Patent is to be procured, 7  
 The form of the firſt Patent, 8  
 The Patent of aſſiſtance, *ibid.*

## Payment.

Payment by the Sheriff to the Plaintiff in the  
 Execution, is good, 179

## Pleas.

In the County Court, the ſeveral ſorts, 429

## Pledges.

*Quod non invenit pleg. de proſequend.* is a good  
 return of an Attachment in an Appeal, 209  
 VWho ſhall find Pledges, *ibid.*  
 The Sheriff ought to take pledges *pro return.*  
*averior.* upon a *return. habend.* 273, 431,  
 432, 438  
 Pledges ought to be found upon entering a  
 plaint, 409  
 He muſt return Pledges in Appeal,  
 27 E. 1. c. 2. 209

## Pleints.

VWhen to be made in the County Court, and  
 how, 414, 427, 428  
 How the Tryals thereupon ſhall be, 427  
 The form thereof, 428  
 The Sheriff cannot determine a plaint *vi & ar-*  
*mis* or *vulneravit*, 423

The form of a plaint for taking of Cattel, 437  
 Not to be entered but by the Plaintiff, or his  
 Attorney, and but one plaint for one Treſpaſs,  
 11 H. 7. c. 15. 409, 414

## Poſſe Comitatus.

The Sheriff or his Under-Sheriff may take what  
 number they think fit, to execute any Pro-  
 ceſs, 104, 354, 355, 435, 493  
 3 E. 1. c. 17. 431, 432, 436  
 Weſtm. 2. c. 39. 454, 455  
 When this *poſſe Com.* is to be taken, 354  
 VWhat perſons he may command to aſſiſt  
 him, 355  
 He may take it in defence of the Realm, *ibid.*  
 So alſo for apprehending a Popiſh Recu-  
 ſant, *ibid.*  
 So likewise where a man demands the Peace in  
 Chancery againſt a great Lord, 355  
 \* The Sheriff upon executing a *Cap. Utl.* may  
 take *poſſe Com.* and break open the houſe, 528

## Prerogative, vide tit. King.

VWhat Statutes the King may diſpenſe withall by  
 his Prerogative, 22  
 He ſhall have all things, whereof the owner is  
 not known, 42  
 Strays, 1  
 Waifs, 1  
 Wrecks, 1  
 Treasure Trove, &c. 1  
 As Swans unmarked, 42  
 Whales, 1  
 Sturgeon, 1  
 Tythes of ground which lyeth in  
 no Pariſh, 1

VWhere his Debtor dyes he ſhall be firſt paid,  
 51, 53  
 His Prerogative the Sheriff muſt maintain. 96

## Preſentments, vide tit. Enqueſt.

Of Bloodſhed in the Sheriff's Torn, where de-  
 terminable, 401

## Prisoners

How Prisoners in Execution ſhall be demanded,  
 13 E. 1. c. 11. 141  
 1 R. 2. c. 12.  
 vide tit. Bail.  
 \* If ſickneſs and diſeaſes happen among poor  
 Prisoners, proviſion is made for their re-  
 moval, 507  
 \* 19 Car. 2. c. 4. *ibid.*  
 \* They

## The TABLE.

\* They may be discharged out of Prison by Paroll, after which discharge it is false imprisonment to detain them, 537

\* What liberty a Prisoner in Execution may have upon a *Hab. Corp.* 561

Privilege, vide tit. Protection.

Process.

All Procefs in the County Court, or Town,  
vide tit. Courts, & Town.  
All Procefs to be fealed with the Great Seal  
and to run in the Kings name,  
27 H. 8. c. 24. 161  
28 E. 1. c. 6. 149, 161  
vide tit. Error.

**Proclamations.**

Proclamation is to be made by the Sheriff upon  
the election of a Parliament-man, 331, 381  
Where he may take *posse Com.* there he may  
make Proclamation for all persons to come  
and aid him, in the execution of his Of-  
fice, 355  
What Statutes he is to proclaim, and when, 12, 378, 379  
He ought to make Proclamation of Summons  
upon the Land, 444  
Upon every Outlawry, 379, 381  
6 H. 8. c. 4. 378  
13 Eliz. c. 3. *ibid.*  
31 Eliz. c. 1. 224  
Upon an Admeasurement *de Dower*, 381, 444  
In a Writ *de Communi Custod.* 382  
In an *Eject. Custod.* *ibid.*  
Upon an *Excommunicat. capend.* 381, 444  
To proclaim a Riot, with a Summons, *ibid.*  
When these several Statutes are to be proclaimed  
by the Sheriff, and where, 378  
*De Winton.* { 13 E. 1. c. 1. 12, *ibid.*  
                  { 28 E. 1. c. 17. *ibid.*  
Of Purveyors, { 1 H. 6. c. 2. *ibid.*  
                  { 20 H. 6. c. 8. *ibid.*  
Of unlawful Games, 33 H. 8. c. 9. *ibid.*  
                  { 5 Eliz. *ibid.*  
Rates for wages, { 39 Eliz. c. 12. *ibid.*  
                  { 1 Jac. c. 6. & 29 *ibid.*  
Of Hawks, 34 E. 3. c. 22. *ibid.*  
Of summons upon the Land, *ibid.*  
37 E. 3. c. 12. 379, \* 532, \* 536  
31 Eliz. c. 3. 379  
How to be made upon Exigents to *Lancaster*  
or *Durham*,  
1 E. 6. c. 10. 379  
5 E. 6. c. 26. *ibid.*

### Prohibition.

Where and when this Writ lyes to the County Court,	426
It lyeth after Judgment	<i>ibid</i>
Also after Execution,	<i>ibid.</i>
To forbid waste, 6 E. 1. c. 5.	293

**Promise.**

A promise to save harmless from an Escape, is as well within the Statute of 23 H. 6. as an Obligation, 361, 362, \* 521  
\* So likewise is a promise to pay Sheriffs Fees, 522

Proprietate probanda, and Property.

Where this writ lyes, and when, 435, 436  
How to be enquired of by the Sheriff, 274  
Not to be claimed by a Servant, 276  
Where the Sheriffs power is determined upon  
claiming of it, 423, 426, 435  
Who may claim it, 436

### Protection.

The King may protect his Debtor, so that no  
body shall sue out Execution against him, till  
his Debt satisfied, 54, 109  
25 E. 3. c. 19. 54  
VVhat persons may have, and are allowed their  
priviledge, and what not, 104, 105, 114  
115, 492  
VVhat protections to be allowed, 109  
VVhere to be allowed, and where not, 143  
VVhat priviledge Clergymen and their Servants  
are to have at their Convocations,  
8 H. 6. c. 1. 105

**Purveyance.**

The Sheriff is to make Purveyance for the King,	383.424
And for his Horses,	383
10 E. 3. c. 4.	<i>ibid.</i>
14 E. 3. c. 19.	<i>ibid.</i>
And Dogges, 14 E. 3. c. 19.	<i>ibid.</i>

Quietus est.

When it shall be a sufficient discharge, 478, \* 503  
When the Sheriff is absolutely discharged,  
2 i Jac. c. 2. 478, \* 503  
2 i Jac. c. 5. *ibid.*  
F f f f *Quo.*

# The TABLE.

*Quod permittat rationabile divis.*

Where this Writ lies, 423  
How to be prosecuted, *ibid.*

## Recognisance.

Where he may take it, and for what, 26, 442  
How to levy the money due upon it, *ibid.*  
What Recognisance the Sheriff must enter in to, 7  
23 E. 6. c. 34. *ibid.*  
Recognisance made to the King, of the same force with a Statute Staple, 53  
VVhat persons may take them for the King, 1 & 2. Phil. & Mar. c. 13 132  
27 H. 8. c. 27. *ibid.*  
How Execution should be sued thereupon, *Westm.* 2. c. 18. 173  
Vide tit. Execution.

Recordare, vide tit. Removal.

## Redisseisin.

The Sheriffs duty in executing the Writ of Redisseisin, 345, 348  
How to procure the enlargement of one convicted of a Redisseisin, 347  
The punishment of one convicted, *ibid.*  
Tenant by Elegit shall have this Writ, *ibid.*  
So shall Tenant by Statute, *ibid.*  
VVhere this writ lyes, 349, *ibid.*  
20 H. 3. c. 3. 343, 345, 346  
53 H. 3. c. 8. *ibid.*  
13 E. 1. c. 26. 346, 347

## Removals.

A Plea holden be *Justicies* in the County Court, may be removed into the *Com. Bench*, 424  
Or into the *Kings-Bench*, 424, 425, 433  
It may be upon a Foreign plea pleaded, 425, 432  
How Replevin ought to be removed, 425, 433  
Pleas in Court Barons, how to be removed, 425  
The Lord may remove his Plea after disclaimer, *Westm.* 2. c. 2. 432, 433

Replevin, vide tit. Retorn.

Of what Cattel the Sheriff is bound to make a Replevy, and of what not, 277  
It may be made out of Court 427  
How to be removed, 425

The form of a Replevin, 438  
The form of the several Procefs in Replevin, 439  
VVho is to make it, and when 430, 431, 434  
And what he may do to make deliverance, 431, 432  
The difference between suing by Plaintiff, and by *Justicies*, 435  
The Sheriff may commit a force to make it, *Westm.* 1. c. 17 353, 354  
• The Plaintiff being Non-suit before Issue joyned in any of the Courts at *Westm.* how the Defendant may avow, 508  
• 17 Car. 2. c. 7. *ibid.*  
• 19 Car. 2. c. 5. *ibid.*  
• The Sheriff must enquire of the value of the Distress, *ibid.*  
• If there be a Non-suit after Issue joyned, then the arrears and value of the Distress must be enquired of, 509  
• If there be Judgment upon a Demurrer, then likewise an enquiry must be made of the value of the Distress, 509

Rescous and Rescuers, vide tit. Retorn.

Rescuers and disturbers of Officers, how chargeable 31 E. 1. c. 39. 31  
• VVhere the Sheriff shall discharge himself by retorning a Rescous, and when well retorned, and what remedy against the Rescuers, *See the Chapter throughout* 529

## Restitution.

VVhen the party grieved shall have it upon a wrong seisure, 86, 148  
Restitution of Goods upon a fresh pursuit, 21 H. 8. c. 11. 71, 81

## Of Retorns.

What a Retorn is, 162  
By whom to be made, 162, 536  
The Sheriff, and not the Bailiff, is to be amerced for a false Retorn, 102, 176, 177  
And also for the default of his Under-sheriff, 176  
If the Bailiff makes an insufficient Retorn to the Court, how the Sheriff ought to Retorn it, 127  
The danger a Sheriff incurs by not retorning Writs, 102, 178, 179, 180, 493, 494  
vide tit. Amercement.  
That the Sheriff is not paid his Fees, no good Retorn, 181  
Where the Sheriff is excused by his Retorns, 181

*Mandavi*

# The TABLE.

<i>Mandavi Ballivo</i> , when and where well returned, and when not,	164, 169, 171, 172 181, 182, 261, 493	Nor double,	171
		Surplusage hurts not,	172
<i>Nullum dedit responsum</i> returned by the Sheriff, where he had directed his warrant to the Bailiff, is no Return in a Replevin,	185	He cannot Return any thing which is contrary to the confession of the party,	173, * 533
He cannot Return a <i>Mandavi Ballivo</i> , to a Bailiff of a Fee,	187	Nor the verdict of the Jury,	173
He ought to put his name to all Returns,	12 E. 2. c. 5. 188, 189, 494, * 536	Where he cannot Return <i>Nihil</i> ,	174
The Return of the Old Sheriff, shall not conclude the New Sheriff,	174, 193, * 514, * 515	Where false Latin shall not hurt the Return	174
A <i>Tarde</i> may be returned to every Writ, except an Attachment;	164, 172, 195, 212, 224 243, 289	If he Return a <i>Cepi</i> , and hath him not at the day, he shall be amerced,	174, 175
Or <i>Capias</i> ,	163	So also upon a <i>Reddidit se</i> , upon an <i>Exigent</i> ,	175
Or <i>Sanctuary</i> ,	165, 211, 278	Or <i>Cap. ad satisfac. &amp;c.</i>	<i>ibid.</i>
Or <i>Languidus</i> ,	211	If the Jury upon a Writ of Enquiry find no damages, there the Sheriff shall not be amerced, because it is not his fault,	177
Or <i>Rescous</i> ,	169, 170, 215, 216, 217	Where a Return is aided by the Statutes of <i>Feofailles</i> ,	
How Juries are to be returned, and by whom,	310, 311, 312. and who is to be returned, 212, 313. vide tit. <i>Furos.</i>	32 H. 8.	289
The penalty for a false Return	14, 15, 113, 152, 172, 173, 309, 310, 311, 312, 313, 493, 495. vide tit. <i>Amercement.</i>	18 Eliz.	<i>ibid.</i>
The manner of returning Parliament-men,	330, usque 336, 338, 339, 340, 341, 342, 343	* The form of a Return by the Old Sheriff to the New Sheriff,	516
How to Return when property is claimed in Replevin,	436	Also upon a Writ directed to the Old Sheriff and executed by the New,	514, 517, 549
That he cannot execute the Kings Process for resistance, is no Return, because he ought to take <i>posse Com.</i>	32, 161, 495, 13 E. 1. c. 39. vide tit. <i>posse Com.</i>	* So likewise in case of a Bailiff,	514, 515, 531
What Return to make when there are two of one name,	113	* A Warrant to two Bailiffs, and returned by one, and yet good,	531
The form of a good Return upon a <i>Sci. Fa.</i>	162, 163	* But it is otherwise in case of the Sheriffs and Corners,	<i>ibid.</i>
Of a <i>Venire Facias</i> , where well returned,	163	* A Return by one who had no authority to make it, is void,	<i>ibid.</i>
He must make an absolute, and not a conditional or fallacious Return,	<i>ibid.</i>	* What <i>Plenary</i> is no good Return,	532
A <i>Rescous</i> is no good Return,	165, * 529, * 530 vide tit. <i>Rescous</i> ,	* <i>Quod summoniri</i> , for <i>per quod, &amp;c.</i> and also he doth not say, <i>nec eorum aliquis</i> , and void,	<i>ibid.</i>
When to Return, <i>quod Clericus est beneficiatus, &amp;c.</i>	166, 172	* How to Return Proclamation and Summons &c. in a Writ of Dower,	532, 533, 336
Attachment against Husband and wife, how to be returned,	166, 167	* The Sheriff upon a <i>Lat.</i> returned, that this Prisoner was delivered by <i>Hab. Corp.</i>	533
What Returns he may make upon a <i>Fi. Fa.</i> against Executors,	167, 173, 174, * 533, * 535	* That the <i>Lat.</i> was returnable upon a day which is not <i>dies Juridicus</i> , a void Return,	<i>ibid.</i>
Every Return ought to be certain,	168, 169 170, 171	* Judgment against a <i>Feme sole</i> who marries, after Execution taken out, yet she may be taken as a <i>Feme sole</i> ,	<i>ibid.</i>
And answer the point of the Writ,	168	* But it is otherwise in case of a <i>Mefne</i> Process,	<i>ibid.</i>
Where the uncertainty is helped,	168, 169	* After possession delivered, certain persons were hid in the house, who when the Sheriff was gone, turned out the Plaintiff; and afterwards the Sheriff came again, but could not deliver possession for the Force; and held a good Return,	534
He must set down the name of the Bailiff of the liberty in his Return,	<i>ibid.</i>	* The Sheriff returns, that he was always ready to deliver possession, and no body came to receive it,	533, 534
It must not have two intendments,	170	* In Dower the Sheriff returns, offer and refusal,	<i>ibid.</i>
Where good by intendment,	171, 172	* Where Lands are taken upon an <i>Extendi fac.</i>	
It must not be repugnant,	171, * 533		

# The TABLE.

but before a *Liberate* sued out, a Writ de *Prærog. Regis* issues out, the Sheriff is bound to execute it, and cannot Return this special matter, 534

\* *Sci. fa. vers. Terr. ten. & hered.* he Returns, as to the *Terr. ten.* but nothing as to the heir, and void, 535

\* *Sci. fa. vers. Execut. & hered.* he Returns that there are no Executors, but Returns an heir, and doth not Return him heir of any Land, *ibid.*

\* In Partition he Returns, that as to part the Jurors would not assist him, *ibid.*

\* Return by the name of *nuper Vic.* and yet good, *ibid.*

\* *Nulla bona prout constare poterit*, is no Return, *ibid.*

\* The Sheriff cannot Return, that the warrant *adeo tarde, &c.* came to his Bailiff, that he could not execute it, 536

\* What Executions are well executed, although they are never Returned, 537

Returns of Writs.

Admeasurement { *de Dower* 203, 263  
                          *de Pasture*, 263, 283

*Accedas ad Curiam*, 200, 272, \* 556

Warrant thereupon, 201

*Alias Capias*, 210, 211, 212

Annuity, 205

\* Extended, 554, 557

*Ad valentiam*, 218

Attachment. 108

Upon an Appeal. 209

With a Proclamation in Chancery, 298

\* *Per catalla ad valenc.* 559

Attaint, 206, 207

Summons, *ibid.*

Affises, 167, 168, 170, 194, 195, 203, 204, 205 263

Summons therein, *ibid.*

\* *Audita Querela*, 559

Excommunicato capiend. 217

Upon an Original, &c. 163, 174 178, 210, 211, 212, 213

Grand, 164, 249

\* In Formedon, 559

Capias, and Petit, 250

Cape { *Ad satisfaciend.* 213, 253  
          *Ad valenciam*, 218  
          *Extra Scaccarium*, 300  
          *Utilagatum*, 214, 215, 253  
          *Alias*, 210, 211, 212  
          *Pluries*, *ibid.*

*Cessavit per biennium*, 218

General, 296

Cerciorari, { To certify a Statute, 297  
                  To certify a Protection, *ibid.*  
                  \* To certify security of the Peace 555

Commission { General, 296  
                  Of Rebellion, 297  
                  A *dedimus potestatem*, 297  
                  To take a Sheriff's Oath 13, 297

Collect. de xv. & x. extra Scaccar. 305

*Decies tantum*, 222

*Detinue*, 222, 174

*Disceit*, 223

*De recto*, 227, 228

{ General, 223, \* 559  
Clericum, 219, 224  
Furator. 164, 170, 224, 288 289, 326

Distringas, { In brevi de gard. 248  
                  Extra Scaccar 302, 305  
                  \* *Propinquas villatas ad sepes prostrat. levand.* 554

Petit Cape, 225

Admeasurement, 203, 269

Dote, { *De Visu*, 225, 256, 257, 289, \* 558  
          *De Seisina*, 225, 282, \* 558  
          Inquir. de dampn. ubi tenens obiit  
                  seisitur, 227, 259  
          Summons, 224

Etate proband. 228

Ejectione firmæ, 229

Eligend. { *Coronatoris*, *ibid.*  
            *Mil. Parliament.* *ibid.*  
            *Burg. Parliament.* 230  
            *Virid. Forestæ*, *ibid.*

Elegit, 231, 232, 233, \* 547, \* 553

Inquisition. *ibid.*

\* Sur Elegit extra Canc. 549

\* Fee-farm Rents extend. sur Elegit, 554, 557

Estreptement, 233

Exigent, 170, 171, 215, 236, 238, 239, 240 237, 238

cum Superfedeas, 237, 238

Excommunicato capiend. 217

Extent upon Recogn. or Statute, 233, 234, 235

False Judgment, 242

Formedon, 247

{ General, 167, 175, 179, 244  
          245, 247  
Fieri Facias { Devastavit, 167, 173, 174, 222 245, 246  
                  Extra Scaccar. 304  
                  Vendic. expon. 246

Garranty de Charters, 248

Gard, *ibid.*

Grand Cape, 249

Habeas Corpus cum causa, 166, 219, 250, 251 252, 253, \* 555

# The TABLE.

<i>Furatorum,</i>	254,287,326	<i>Precept of a Justice of the Peace, directed to the Sheriff to enquire of Riots and Forcible Entries,</i>	307
<i>Habere Seisinam,</i>	174,180,254,255,256	<i>Parliamenti summon.</i>	266
<i>facias Possessionem,</i>	174,256	<i>Precept for a Gaol-delivery,</i>	169
<i>Visum,</i>	256	<i>Extra Cancellar.</i>	298
<i>Homine Replegiando,</i>	258,* 556	<i>against the Sheriff, ad reddend</i>	
<i>Inquir. de dampn.</i>	<i>Sur Stat. de Westm. 2. versus eos qui sepes noctanter proster-</i>	<i>Proclamat-</i>	<i>Comp.</i>
	<i>nant,</i>	<i>ons</i>	306
	<i>In dote ubi tenens obiit seifit,</i>	<i>upon an Exigent, 171,180,241</i>	
	<i>De dampn. in Trespas,</i>	* 558	
	<i>Extra Scaccar.</i>	230,259	
		300,302	
	<i>Out of the Exchequer,</i>	306,307	
	<i>Upon an ad quod dampnum,</i>	259	
	<i>* Upon a melius Inquirend. quomodo ad mortem devenit,</i>	557	
	<i>Admeasurement,</i>	259	
	<i>Capias Utlagatum,</i>	ibid.	
	<i>Etate probanda,</i>	ibid.	
	<i>Elegit,</i>	259 * 547,* 548,* 553	
	<i>Enquiry de dampn.</i>	259	
<i>Inquisit.</i>	<i>Extent,</i>	259,* 550	
	<i>Partition,</i>	259	
	<i>Proprietate proband.</i>	ibid.	
	<i>Redisseisin,</i>	171,259,346,348,349	
	<i>Secunda superoneratione,</i>	259	
	<i>Inquir. de Vasto</i>	171,259	
	<i>* Super Stat. staple,</i>	552	
	<i>* Super Re-extent. super Stat. staple pro Executors,</i>	551	
	<i>* Super diem clausit extremum,</i>	549	
<i>Latitat,</i>	267		
<i>Levari facias,</i>	260		
<i>Liberate post extent. sur Stat. staple,</i>	167,233		
<i>Libertate proband.</i>	263		
<i>* Versus Malefactores qui sepes proster-</i>	538		
	539		
<i>Mesne</i>	262,263,267		
<i>Medio,</i>	262		
<i>Mil. ordin. recipiend</i>	ibid.		
<i>Mil. Parliamenti eligend,</i>	ibid.		
<i>Nativo habend.</i>	181,262,263		
<i>Ne exeat Regnum,</i>	298		
<i>Ordine Mil. recipiend.</i>	262		
<i>Orig.</i>	<i>In Trespas,</i>	221,263	
	<i>In Debito,</i>	264	
	<i>In Partic.</i>	220	
	<i>In Convvent. &amp;c.</i>	220	
<i>* Quod quer. non inven. pleg. de prof.</i>	559		
<i>Partic.</i>	264,265,* 555,* 556		
<i>Per que servic.</i>	266		
<i>Præmunire,</i>	267		
<i>Præcipe quod reddat,</i>	267,268		
<i>Pluries</i>	210,211,212		
<i>Pone</i>	<i>to remove a Pleint,</i>	269	
	<i>upon a Replevin,</i>	269	
<i>Petit Cape,</i>	225		
		<i>Proclamation</i>	<i>In brevi de Admeasurement,</i>
		<i>de summons</i>	<i>In Communi Custodia,</i>
			<i>In brevi de Dote,</i>
			<i>In vasto,</i>
		<i>* Proprietat. clamat.</i>	557
		<i>Quid juris clamat,</i>	270
		<i>Quare impedit,</i>	166,180,263,270
		<i>Quo fure,</i>	273
		<i>Quis est tenens,</i>	303
		<i>Quod Clericus non habet laicum feodum</i>	219
		<i>Quando aliquis ostendit Vic. tall.</i>	306
		<i>Recordare,</i>	271,272,348,349
		<i>Redisseisin,</i>	272,273
		<i>Retorn. habend.</i>	180
		<i>* Property claimed, in Replevin,</i>	557
		<i>Recogn. extra Cum.</i>	298
		<i>Replevin sur Retorn.habend. averiorum,</i>	273,274
			438,
		<i>* In Repleg. quod nullus ven. ad monstr. averia</i>	556
		<i>Resummons,</i>	277
		<i>Respect. homagio,</i>	306
		<i>Restitution</i>	<i>after Exigent.</i>
			<i>after Fi. Fa.</i>
		<i>* Rescous returned,</i>	555,557, vide tit. Rescous.
		<i>Scire Facias,</i>	163,164,167,169,171,263,278
			279,280,281,305.* versus Terr-ten.
		<i>Significavit,</i>	559
		<i>cum proclamac.</i>	282
		<i>Secunda superoneratione,</i>	283
		<i>Summons</i>	<i>ad Sessionem pacis,</i>
			<i>in Vasto,</i>
			<i>coram Justic. Foreste,</i>
			<i>Mil. Parliamenti,</i>
			<i>In Debito,</i>
		<i>Securitate pacis,</i>	299,* 555
		<i>Seisure nomine districtionis in Scaccario,</i>	301
		<i>Supplicavit,</i>	299
		<i>Seisin, vide tit.</i>	<i>Dower,</i>
			<i>Habere facias seisinam.</i>
		<i>Second deliverance,</i>	275
		<i>Superseas &amp; cum Exigent,</i>	212,237
		<i>* Tolt Retorn,</i>	558
		<i>Vasto,</i>	263
		<i>Venditioni expon.</i>	286
		<i>Extra Secaccarium,</i>	304
			Venire

# The TABLE.

<i>Juratorum,</i>	163,286,316
<i>Venire facias</i> } <i>Defalt,</i>	286
	<i>Extra Scaccarium,</i>
	303
* <i>Ventre inspiciendo,</i>	537,538
<i>Vi laica removenda,</i>	180,290
<i>Witberniam,</i>	187,276,294,295
<i>Warrant. super secund. deliberation.</i>	275
The Sheriff cannot Return a <i>Mand. Ballivo</i> to either of these Writs,	
<i>Inquisit. De Vasso,</i>	177,186,294
Upon a <i>Repleg.</i>	185,275,276
A <i>Dist.</i> for Debt,	185
<i>Redisseisin,</i>	186,272
<i>Witberniam,</i>	187,276,294,295
Extent upon a <i>Stat. Merchant,</i>	187

## Riots and Rioters.

What the Sheriff is to do upon a Riot,	371
	381,494
The Punishment of the Rioters,	381
The Sheriff must arrest them,	
1 R. 2. c. 8.	30
15 R. 2. c. 2.	371,381
2 E. 3. c. 3.	30
13 H. 4. c. 7.	30,171,381
And must make enquiry of them,	
13 H. 4. c. 7.	30
And make Certificate thereof to the Council,	
14 H. 4. c. 7.	31
Must execute Process against Rioters,	
8 H. 6. c. 9.	3,37
19 H. 7. c. 13.	ibid.
* The manner of proceeding against those who in multitudes throw down Hedges and Ditches, &c.	538,539
* <i>Westm. 2. c. 46.</i>	439

## Sci. Facias.

The nature of it,	161
<i>Sci. Fa.</i> by the Sheriff against Pledges in Replevin,	434
His entry upon the execution hereof,	161
* <i>Sci. Fa. vers. bared &amp; Terr-ten.</i> he returned as to the <i>Terr-ten.</i> but nothing as to the Heir,	535
* <i>Sci. Fa. vers. bared &amp; Execut.</i> he returns, that there are no Executors, but returns an Heir, and doth not return him heir of any Land	534

## Security.

Whether the Sheriff may take security of his Under-sheriff or Bailiffs,	368
---	-----

Security of the Peace, of whom to be taken, and before whom, 300

## Sessions.

The Sheriff is to provide a convenient place for the Sessions to be kept in, 371

## Sewers.

The Commissioners have authority to direct their Precepts to all Sheriffs, &c. 374  
They have authority to convene a Jury, *ibid.*  
All Officers, &c. ought to attend them, *ibid.*  
23 H. 8. c. 5. *ibid.*  
7 Jac. c. 20. *ibid.*

## Sheriff.

Their name, antiquity, and charge, 1,2,3,5  
What manner of persons they must be, 6  
9 E. 2. de Lincoln \* 503  
4 E. 3. c. 9. *ibid.*  
England, 9 E. 2. 6  
How elected in { 14 E. 3. c. 7. *ibid.*  
Wales, 21 H. 8. c. 13. *ibid.*  
34 H. 2. c. 26. *ibid.*  
Not to be chosen of the same County twice within three years, 22  
1 R. 2. c. 11. *ibid.*  
23 H. 6. c. 8. *ibid.*  
What Recognizance he must enter into, 7,491,  
vide tit. *Recognizance.*  
He must procure his Patent, 7  
When and where he must read it, 20  
What Oaths he must make. vide tit. *Oaths.*  
Before whom to be taken. 13,14  
He must not be in his Office above one year, 21  
22,491

Where to be resident,  
4 H. 4. c. 5. 22  
How long the old Sheriff to continue,  
12 E. 1. c. 1. 22  
17 E. 4. c. 6. *ibid.*  
vide tit. *Quictus.*

*His Judicial or absolute Power,*  
24 usque 33, 34, 35.

To keep the Peace, 25,26  
To arrest Felons, 27  
5 E. 3. c. 11. 371  
And suspected persons, 28  
To take away weapons from Servants, 29,494  
To arrest Rioters, 30 vide tit. *Rioters.*  
To imprison them, and enquire thereon, 31  
To arrest Barretors, *ibid.*  
How to punish his disturbers. *ibid.*  
What

# The TABLE.

What Prisoners to bail, 33,489.	vide tit. <i>Wail</i>	To make Purveyance for the King,	37,383
To regulate the Assize of Bread, 33.	vide tit. <i>Assize</i> .	vide tit. <i>Purveyance</i> .	
To enquire of waste in person,	34,294	To look after the Kings Lands,	37,38
And also upon a Writ of <i>Redisseisin</i> ,	34,86	To keep his Franchises,	39
So also upon a writ of <i>Partition</i> , 264.	Vide tit. <i>Partition</i> .	When to seize them,	41
To take security for the Peace,	34,35,300	What Lands he must seize to the Kings use,	39
To sit in the County Court,	424	40. vide tit. <i>Forfeiture</i> .	
Where to execute the Office of a Justice of the Peace,		And what Land, and when for the Kings Debts,	
1 Mar. c. 8.	27	9 H. 3. c. 8.	56
1 E. 6. c. 7.	<i>ibid.</i>	Truly to keep the Kings suit,	44,45,46
* To enquire <i>de dampnis</i> in Dower,	511	Not to assent to the decrealing of his Rents,	47
		To suppress Recufants,	
		3 Jac. c. 4.	355
		He must receive all Writs, and make Warrants upon them,	
		2 E. 3. c. 5.	102
		Westm. c. 2. 39.	<i>ibid.</i>
		Make panels, vide tit. <i>Panel</i> s.	
		He must make Replevins,	
		52 H. 3. c. 21.	430
		What he ought to do upon	
		13 E. 1. <i>de Winton</i> .	11
		5 E. 3. c. 14.	<i>ibid.</i>
		To put in execution the Statute of Labourers,	
		2 H. 5. c. 4.	379
		What he may do in executing an Execution,	
		350, 351. vide tit. <i>Execution</i> .	
		To return Enquests for Escheators,	374
		8 H. 6. c. 16.	376
		For the Clerk of the Market,	377
		Who he may arrest, and who not,	104, 105
			114, 115
		What he must do in case of a Protection	109
		How to execute Process that issue out upon Originals,	149, 150, usque, 162
		When to enter a Liberty,	462, 463, 464
		He must take notice of all Writs entred against any of his Prisoners, at his peril,	114
		One Sheriff cannot summon another,	193
		He cannot summon himself,	153, * 511
		* It is good as well where the Sheriff is Plaintiff, as Defendant, to direct the Writs to the Coroners to be executed by them,	512
		* What he must do upon a writ <i>de ventre inspiciendo</i> ,	544
		The dangers and penalties which he undergoes for things done, not done, or mis-done, by him or his Officers,	483, usque 496
		The penalty for returning a wrong Jury,	
		27 Eliz. c. 6.	310, 314, 315, 317, 319
		3 H. 8. c. 12.	320, 325
		For not doing his duty in making Arrests,	
		23 H. 6. c. 3.	492
		For procuring Prisoners to be approvers,	
		13 E. 1. c. 12.	497
		1 E. 3. c. 7.	<i>ibid.</i>
		For entring false Pleints,	
			49

# The TABLE.

28 E. 1. c. 35.	489,498	* He must not use craft nor force, in executing a	
For seiling Land without Writ,		Mefne Process,	524
VVestm. 1. c. 24.	496	For what he is accountable, vide tit. Accounts.	
For taking Extortion, vide tit. <i>Extortion</i> .		* The number of his Servants he is to have at	
For not returning a Summons to Parliament,		the Assises,	502
5 R. 2. c. 4.	330,338	Where the Sheriff shall have an Action against	
1 H. 5. c. 1.	332,335	his Predecessor for a false Return,	497
10 H. 6. c. 2.	333,334	Must deliver a Kalendar of their criminary Pri-	
He must answer for all his Officers,		soners,	370
1 H. 3. c. 18.	454,455	What Pleas he is to hold in his Courts, vide tit.	
14 E. 3. c. 10,	455 457,465	Courts.	
23 H. 6. c. 8.	454,455	What Fines and Amercements he is to have,	
23 H. 8. c. 2.	465		397,398
He must take notice of all Writs entred against		He must not enquire in his Torn <i>per breve</i> ,	398,
any in his custody,	114		399
He must be careful to take the right person,		What Prisoners shall be delivered to him,	15,
146,155,* 528,* 529			16,17
He must be amerced for a false Return, 175,176		What shall happen at his death, and what then	
vide tit. <i>Retorn</i> .		shall become of the prisoners,	17
For misbehaving of himself in his Office,	493,	What he may do after a new Sheriff chosen,	19
	491	When his Officers and Deputies must be chosen,	
The danger he is subject to for not returning his		and how to be made,	20,21
VVrits,	178,179,180	He must not dispute the Court out of which his	
31 E. 1. c. 39.	493	Precepts issue,	104,106,107
By not executing his VVrits.	493	What Process he must not execute,	106,107
He is Finable for not attending the Judges,		He must not make Warrants without Writs,	
	369,370		43 Eliz. c. 6.
VVhere he shall be amerced to the King,	102,		111,112
	495,496	1 Jac. c. 25.	<i>ibid.</i>
Where subject to the Action of either the Plain-		He or his Under-sheriff must duly make out all	
tiff or Defendant,	496	Warrants upon Mefne Process,	117
The penalty for not returning sufficient pledg-		How Process against Husband and Wife to be	
es in Replevin,	433,434	executed,	166
The penalty for executing his Office without		What security he may take of his Undersheriff	
taking his Oath,	14,15,490	or Bailiff,	
The penalty the Sheriff undergoes for Lea-			23 E. 6. c. 10.
sing his Offices or County,			368
9 E. 2. de Lincoln.	23	What Sheriffs of Counties shall be joynd toge-	
2 E. 3. c. 12.	<i>ibid.</i>	ther, and how and when they shall be charg-	
4 E. 3. c. 15.	<i>ibid.</i>	ed,	
14 E. 3. c. 9.	<i>ibid.</i>		8 Eliz. c. 16.
4 H. 4. c. 5.	<i>ibid.</i>		477
23 H. 6. c. 10.	10,11,23		13 Eliz. c. 22.
6 E. 6. c. 16.	23		<i>ibid.</i>
* Must not enter with drawn Swords <i>in terrorem</i> ,		* What Covenant, between the Sheriff and his	
where no opposition is made,	525	Under-sheriff shall be binding,	511,512,513
* He is excusable although there is no Original		* Where the New Sheriff shall be chargeable for	
or Record to warrant the proceedings, <i>ibid.</i>		the Escapes of Prisoners, and where the Old	
* He is not to take notice of Error in proceed-		Sheriff,	514
ings,	<i>ibid.</i>	* How Prisoners are to be delivered from the	
* What he may do upon Execution against		Old Sheriff to the New,	514
Goods,	526	* The Old Sheriff after his discharge sells Goods	
* Against the Body,	<i>ibid.</i>	taken upon a <i>Fi. Fa.</i> and good,	<i>ibid.</i>
* Against the Lands,	527	* What remedy against the Sheriff for keeping	
* Upon <i>Elegits</i> and <i>Extents</i> , &c.	<i>ibid.</i>	Goods in his hands,	<i>ibid.</i>
* He may break open a door to execute a <i>Cap.</i>		Sheriffs of Wales, vide tit. <i>Wales</i> .	
<i>Utlagat</i> .	524		

# The TABLE.

## Statute.

Penal Statute, how to be taken,	24
Stat. Merchant, what it is,	112
How to be executed,	120, 121
Stat. Staple, what it is,	122, 123
How to be executed,	123, 124, 125
Several sorts <i>de Statute Staple</i> , and how to proceed thereupon,	
23 <i>H. 8. c. 6.</i>	123
29 <i>E. 3. c. 29.</i>	122
27 <i>E. 3. c. 9.</i>	122, 123
When to be enrolled,	
27 <i>Eliz. c. 4.</i>	123
What lands are bound thereby,	
13 <i>E. 1.</i>	125
27 <i>E. 3. c. 9.</i>	125, 136
23 <i>H. 8. c. 6.</i>	125, 131
Statute Merchant, and how to proceed thereon,	
13 <i>E. 1.</i>	120, 125
5 <i>H. 4. c. 12.</i>	121
When Statutes to be proclaimed, vide tit. Proclamation.	

## Suit.

What it is, and by whom and to whom to be performed,	44, 45
The kinds of it,	45, 46
When and how it may be performed by Attorney,	46

## Summons and Summoners.

What it is, and to whom directed,	149
How many, and who shall be Summoners in a <i>Precipe quod reddat</i> ,	268
Where to be executed,	149, 151, 152, 153
If not well executed, it is Error,	150, 153
In what actions,	149, 150, 151, 153, 154
What notice is requisite upon a Summons,	151
By what a man may be summoned,	152
What exceptions the Defendant hath liberty by Law to make to the Summons,	151
What Process follows the Summons,	<i>ibid.</i>

## Superfedeas.

There shall be none to a Writ of Error, where bail is not put in, 3 <i>Fac. c. 8.</i>	159
* After Goods taken in Execution, a <i>Superfedeas</i> comes too late, although they are not sold,	528
* The shewing the Writ of Error to the Sheriff, is a <i>Superfedeas</i> in Law,	<i>ibid.</i>
* A <i>Superfedeas</i> comes too late to the Bailiff	

after he hath taken the body in Execution,	528
* But if it comes before a Writ executed, it is time enough,	<i>ibid.</i>
* If it comes after a Writ executed, how to return it together with the Writ,	<i>ibid.</i>
* The Sheriff must obey a <i>Superfedeas</i> that comes to him before Execution Actually executed.	529

## Tales.

By whom to be granted, and when,	328
Stat. { 4 <i>Phil. &amp; Mar. c. 7.</i>	<i>ibid.</i>
35 <i>H. 8. c. 6.</i>	<i>ibid.</i>
14 <i>Eliz. c. 9.</i>	<i>ibid.</i>
A <i>decem tales</i> , what and when,	<i>ibid.</i>
<i>Octo tales</i> ,	<i>ibid.</i>
<i>Viginti tales</i> ,	<i>ibid.</i>

## Tenants.

In Auncient Demefine, shall not be returned upon Juries,	312
They shall not be assessed for Parliament-mens wages,	344
No more shall their Tenants,	<i>ibid.</i>
They shall not come to the Sheriffs Torn,	387
Their land is extendible by <i>Elegit</i> ;	136

## Tender.

If the Rent or Amercement be tendred at the time of the Distress, it is good,	275
---	-----

## Toll.

Where it is due, and for what,	41, 42
It must not be excessive.	41

## Torn

The Sheriffs Torn, what it is,	384, 385, 391, 400
The Stile, and who is Judge of it,	391
What Suitors ought to come to it,	386, 387
52 <i>H. 3. c. 10.</i>	<i>ibid.</i>
Who are bound to appear there, and who not,	<i>ibid.</i>
And who shall be Jurors there, vide tit. Jurors.	
Not to appear at the Torn, if there be a Leet within it,	387
How often to be kept in a year,	
21 <i>Fac. c. 21.</i>	401
13 <i>R. 2. c. 8.</i>	<i>ibid.</i>
31 <i>E. 3. c. 14.</i>	390, 391
When and where to be kept	390
G g g g	9 <i>H. 3.</i>

# The TABLE.

9 H. 3. c. 33.	ibid.		
Mar. Chart. c. 35.	ibid.		
What offences are punishable in the Sheriffs			
Torn,	396,397,398,400,		
What things enquirable there,	395		
7 E. 6. c. 5.	ibid.		
4 Jac. c. 1.	ibid.		
9 H. 5. c. 8.	395		
31 H. 6. c. 3.	ibid.		
13 E. 1. c. 5.	394		
9 H. 3. c. 35.	391		
8. H. 7. c. 4.	ibid.		
21 Jac. c. 21.	395		
51 H. 3. c. 34.	25,392,395		
32 H. 8. c. 41.	392		
3 E. 1. c. 11.	ibid.		
Not to enquire in his Torn <i>per breve</i> ,	25,397		
	398		
<i>Westm.</i> 2. c. 13.	397		
28 E. 3. c. 9	398		
All Endictments taken in the Torn to be cer-			
tified at the next Sessions,	398,399		
1 E. 4. c. 2.	ibid.		
His power in his Torn,	403,402,403,404		
Of what things he can hold plea,	400,401		
<i>Mag. Chart.</i> c. 17.	401		
The reason why this Court is almost out of			
use,	402,403		
Their profits in their Torns,	472		
29, <i>Eliz.</i> c. 4.	ibid.		
27 H. 8. c. 7.	ibid.		
32 <i>Eliz.</i> c. 3.	ibid.		
1 E. 4. c. 2.	ibid.		
<b>Trespases.</b>			
Where property determinable,	423,427		
To what damage the Plaintiff may count,	423		
<b>Trial.</b>			
Sheriff or no Sheriff, how tryable,	8		
<b>Trying.</b>			
What it is,			
<b>View.</b>			
In what writs, and from whence to come,	257		
	259		
<b>Wenire facias.</b>			
The several sorts thereof,	160		
The effect thereof,	ibid.		
<b>Wenire inspiciendo.</b>			
* The nature of the Writ and how to be re-			
torned,	537		
* Together with all the proceedings thereupon,	ibid.		
<b>Warder.</b>			
How to be chosen,	443		
His Oath,	444		
His Office,	ibid.		
<b>Under-sheriff.</b>			
His name and office,	455,456		
<i>Westm.</i> 2. c. 39.	3		
11 H. 7. c. 15.	ibid.		
His Oath,	453		
The form of the Indenture between the High-			
sheriff and Under-sheriff,	445,446,447		
	448,449,451,452		
Abuses practised by Under-sheriffs, Bailiffs, &c.			
and their punishments in general,	497,498		
	499,500		
For false Retorns,	498,499,500		
The Authority of the Under-sheriff,	3		
Bound to receive all Writs in any place in the			
County, and to make Warrants, taking their			
reasonable Fees,	101		
He commonly executes all Writs,	103		
He may do it without a Warrant,	103,117		
Must not make out any Warrants, &c. without			
writs,	111,112		
He or his High-sheriff are to make out all War-			
rants upon <i>Mefne</i> Process,	117		
The penalty of doing any thing against his			
Oath,	490		
To be resident in the County	491		
Where the Under-sheriff, and not the High-			
sheriff, shall be punished for a false Re-			
torn,	455		
An Under-sheriff may be made by parol,	457		
No Under-sheriff, Clerk, Bailiff, &c. to be an			
Attorney, or continue in their Offices above			
one year,	454,455		
1 H. 5. c. 4.	ibid.		
42 E. 3. c. 9.	21,454		
43 H. 6. c. 8.	21,22,454		
6 H. 8. c. 18.	ibid.		
28 E. 3. c. 7.	* 21		
14 E. 3. c. 7.	ibid.		
No pardon shall be granted for his Office,			
28 H. 6. c. 3.	21		
8 H. 4. c. 4.	21		
Under-sheriff of <i>London</i> and <i>Bristol</i> , excepted			
out			

# The TABLE.

out of these Statutes,

6 H. 8. c. 18.

22

Must have four Deputies at the least to make

Replevins,

20,434,491

Where Covenants between the High-sheriff and Under-sheriff shall bind, and where

not,

511,512,513

**Wapentake.**

What it is, and the extent of it,

4

**Warrants.**

**Wages.**

Of Parliament-men how to be assessed and levied,

344

Of Justices of the Peace, and their Clerks, how much and how to be levied,

12 R. 2. c. 10.

373

14 R. 2. c. 11.

*ibid.*

vide tit. **Parliament.**

**Waifs.** vide tit. **Forfeitures.**

**Wales.**

Sheriffs in *Wales* have the same power as Sheriffs in *England*,

376

The Sheriffs in *Wales* cannot enquire of Felonies in their Torns,

393

Not to suffer more than one Plaint for one Trespass, and that to be entred by the Plaintiff or his Attorney only,

413

27 H. 8. c. 26.

*ibid.*

34 H. 8. c. 26.

*ibid.*

They must make Deputies in all Courts at *Westminster*,

456

1 E. 6. c. 10.

*ibid.*

9 E. 6. c. 26

*ibid.*

What persons he may bail, and what not,

28,29

27 H. 8. c. 26.

29

34 H. 8. c. 26.

28

Their Fees,

34 H. 8. c. 26.

473,474,481

What wages their Parliament-men must have, and how to be levied,

345

27 H. 8. c. 26.

*ibid.*

Sheriffs in *Wales* to attend upon Escheators here,

376

34 H. 8. c. 26.

*ibid.*

Where Lands lye in two Bailiffs Liberties, the

Sheriffs Writ is to both,

164

The form of the Warrant to summon an Assize,

196

A general Sessions,

198

A special Sessions,

*ibid.*

Upon a *Fi. Fa.* directed to several Bailiffs, and executed by any of them, is yet good,

351

The form of a Warrant to proclaim and warn the Sheriffs Torn,

391

A command of the Sheriffs by paroll, to take Cattel in Wythernam, is as good as War-

rant under Seal,

437

Or to execute other Writs,

103

Or to make Attachments,

156

By whom Attachments are to be made,

117

The form of a Warrant to appear upon a *Mefne* Process,

*ibid.*

The form of a special Warrant,

118

Two other forms of Warrants,

*ibid.*

**Wrecks** vide tit. **Prerogative, Forfeitures.**

When goods may be said to be wreckt,

90,

2 E. 1. c. 14.

91

27 E. 3. c. 13.

89

How long time before Forfeiture,

*ibid.*

The Sheriff must not meddle with wrecks granted to a Subject,

89,92

17 E. 2. c. 11.

*ibid.*

Where matters touching wrecks are tryable and how,

90

15 R. 2. c. 3.

90,91

**Writs.**

All Writs are directed to the Sheriff of the County,

96,186

Or Coroner,

96,97,98,99

The form of the Writ to summon the Parliament,

# The TABLE.

ment,	337	Tower,	101
For chusing Knights and Burgesſes,	<i>ibid.</i>	28. E. 3. c. 10.	<i>ibid.</i>
The form of the Writ of diſcharge to the Old Sheriff,	8	1 H. 4. c. 15,	<i>ibid.</i>
When diſcharged of his Office by it,	18, 22	* <i>De ventre inſpiciendo</i> , with the proceedings thereupon,	537, 538
What Writs are to be directed to the Biſhop,	100, 101	* <i>Versus Malefactores qui ſepes proſternant</i> , with the Returns and proceedings thereupon,	538, 539
To the Lieutenant of the Tower,	101		
To the Juſtices,	<i>ibid.</i>		
To the Lords,	<i>ibid.</i>		
To the parties themſelves,	<i>ibid.</i>		
They muſt be made in the Kings name,	149		
And ſealed with the great Seal,	<i>ibid.</i>		
Where to be executed by the Lieutenant of the			
		Wythernam.	
		When to be granted,	276, 423, 435, 437
		It cannot be granted but in full Court,	427
		The Proceſs upon a Wythernam,	437



FINIS.

